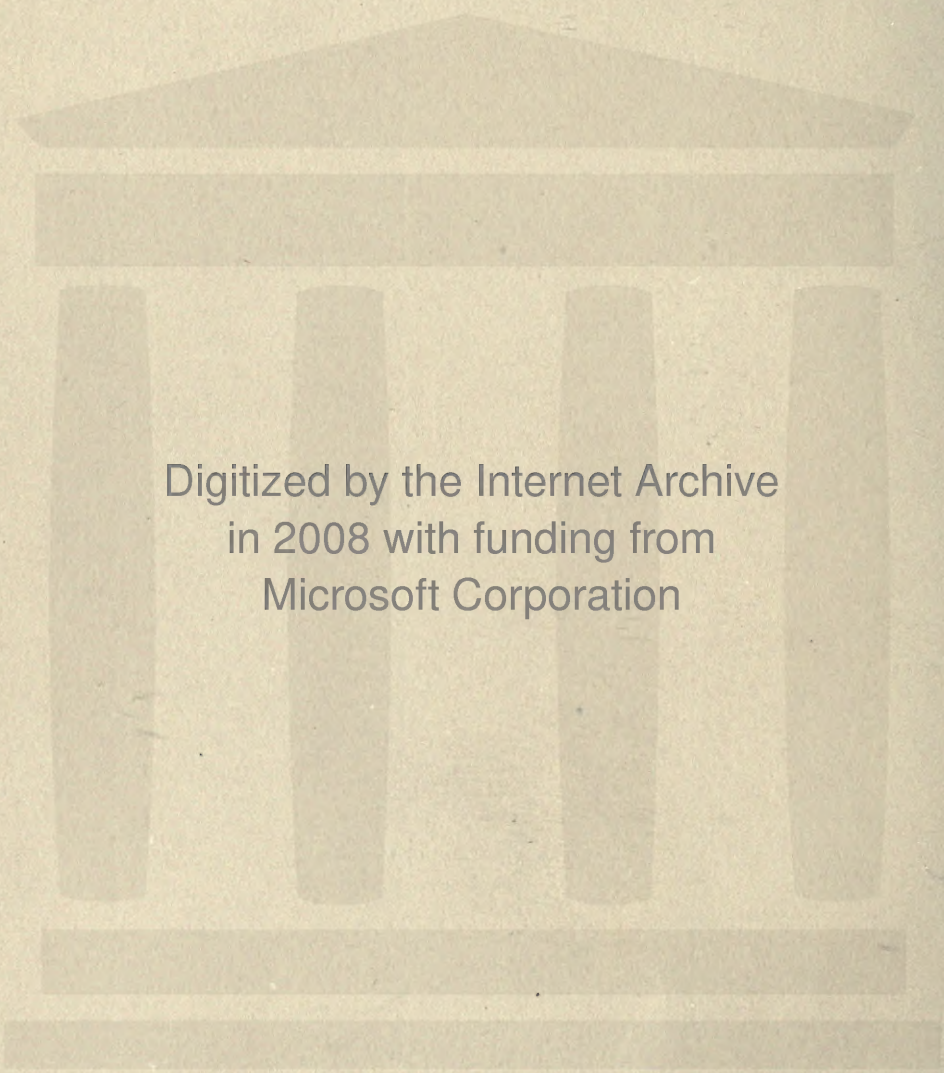
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Statesman Edition — Vol. XVI

Charles Sumner

HIS COMPLETE WORKS

With Introduction

BY

HON. GEORGE FRISBIE HOAR

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CONTENTS OF VOLUME XVI.

PAGE

EQUAL RIGHTS, WHETHER POLITICAL OR CIVIL, BY ACT OF CONGRESS. Letter to the Border State Convention at Baltimore, September 8, 1867 1

ARE WE A NATION? Address before the New York Young Men's Republican Union, at the Cooper Institute, Tuesday Evening, November 19, 1867 3

CONSTANT DISTRUST OF THE PRESIDENT. Remarks in the Senate, on the Final Adjournment, November 26, 1867 . 66

THE FOURTEENTH AMENDMENT: WITHDRAWAL OF ASSENT BY A STATE. Remarks in the Senate, on the Resolutions of the Legislature of Ohio rescinding its former Resolution in Ratification of the Fourteenth Amendment, January 31, 1868 69

LOYALTY IN THE SENATE: ADMISSION OF A SENATOR. Remarks in the Senate, on the Resolution to admit Philip F. Thomas as Senator from Maryland, February 13, 1868 73

INTERNATIONAL COPYRIGHT. Letter to a Committee in New York, on this Subject, February 17, 1868 . . . 86

THE IMPEACHMENT OF THE PRESIDENT. THE RIGHT OF THE PRESIDENT OF THE SENATE PRO TEM. TO VOTE. Remarks in the Senate, on the Question of the Competency of Mr. Wade, Senator from Ohio, then President of the Senate pro Tem., to vote on the Impeachment of President Johnson, March 5, 1868 88

THE CHIEF JUSTICE, PRESIDING IN THE SENATE, CANNOT RULE OR VOTE. Opinion in the Case of the Impeachment of Andrew Johnson, President of the United States, March 31, 1868 98

PAGE

EXPULSION OF THE PRESIDENT. Opinion in the Case of the Impeachment of Andrew Johnson, President of the United States, May 26, 1868 134

CONSTITUTIONAL RESPONSIBILITY OF SENATORS FOR THEIR VOTES IN CASES OF IMPEACHMENT. Resolutions in the Senate, June 3, 1868 227

VALIDITY AND NECESSITY OF FUNDAMENTAL CONDITIONS ON STATES. Speech in the Senate, June 10, 1868 . . 230

ELIGIBILITY OF A COLORED CITIZEN TO CONGRESS. Letter to an Inquirer at Norfolk, Va., June 22, 1868 . . . 255

INDEPENDENCE, AND THOSE WHO SAVED THE ORIGINAL WORK. Letter on the Soldiers' Monument at North Weymouth, Mass., July 2, 1868 256

COLORED SENATORS, — THEIR IMPORTANCE IN SETTLING THE QUESTION OF EQUAL RIGHTS. Letter to an Inquirer in South Carolina, July 3, 1868 257

FINANCIAL RECONSTRUCTION THROUGH PUBLIC FAITH AND SPECIE PAYMENTS. Speech in the Senate, on the Bill to fund the National Debt, July 11, 1868 259

NO REPRISALS ON INNOCENT PERSONS. Speech in the Senate, on the Bill concerning the Rights of American Citizens, July 18, 1868 297

THE CHINESE EMBASSY, AND OUR RELATIONS WITH CHINA. Speech at the Banquet by the City of Boston to the Chinese Embassy, August 21, 1868 318

THE REBEL PARTY. Speech at the Flag-Raising of the Grant and Colfax Club, in Ward Six, Boston, on the Evening of September 14, 1868 326

ENFRANCHISEMENT IN MISSOURI: WHY WAIT? Letter to a Citizen of St. Louis, October 3, 1868 331

ISSUES AT THE PRESIDENTIAL ELECTION. Speech at the City Hall, Cambridge, October 29, 1868 333

EQUAL RIGHTS, WHETHER POLITICAL OR CIVIL, BY ACT OF CONGRESS.

LETTER TO THE BORDER STATE CONVENTION AT BALTIMORE, SEPTEMBER 8, 1867.

SEPTEMBER 12, 1867, Tennessee, Delaware, Maryland, Missouri, Kentucky, and the District of Columbia were fully represented in what was called "the Border State Convention," which assembled in the Front Street Theatre, Baltimore. The object, in the language of the call, was "to advance the cause of manhood suffrage, and to demand of Congress the passage of the Sumner-Wilson bill." The following letter from Mr. Sumner was read to the Convention.

BOSTON, September 8, 1867.

DEAR SIR, — I shall not be able to be with you at your Convention in Baltimore, according to the invitation with which you have honored me. I ask you to accept my best wishes.

Congress will leave undone what it ought to do, if it fails to provide promptly for the establishment of Equal Rights, whether political or civil, everywhere throughout the Union. This is a solemn duty, not to be shirked or postponed.

The idea is intolerable, that any State, under any pretension of State Rights, can set up *a political oligarchy* within its borders, and then call itself a republican government. I insist with all my soul that such

a government must be rejected, as inconsistent with the requirements of the Declaration of Independence.

Faithfully yours,

CHARLES SUMNER.

A letter from Hon. Henry Wilson stated: "At the last session I offered an amendment, on the 17th of July, allowing all, without distinction of color, to vote and hold office, making no distinction in rights or privileges."

ARE WE A NATION?

ADDRESS BEFORE THE NEW YORK YOUNG MEN'S REPUBLICAN UNION, AT THE COOPER INSTITUTE, TUESDAY EVENING, NOVEMBER 19, 1867.

And I will make them one nation in the land upon the mountains of Israel, ... and they shall be no more two nations. . . . . Neither shall they defile themselves any more with their idols, nor with their detestable things, nor with any of their transgressions. — EZEKIEL, xxxvii. 22, 23.

In these days their union is so entire and perfect that they are not only joined together in bonds of friendship and alliance, but even make use of the same laws, the same weights, coins, and measures, the same magistrates, counsellors, and judges: so that the inhabitants of this whole tract of Greece seem in all respects to form but one single city, except only that they are not enclosed within the circuit of the same walls; in every other point, both through the whole republic and in every separate state, we find the most exact resemblance and conformity. — POLYBIUS, *General History*, tr. Hampton, (London, 1756,) Vol. I. pp. 147, 148.

We represent the people, — we are a Nation. To vote by States will keep up colonial distinctions. . . . . The more a man aims at serving America, the more he serves his colony. I am not pleading the cause of Pennsylvania; I consider myself a citizen of America. — BENJAMIN RUSH, *Speech in the Continental Congress, July*, 1776: Bancroft, History of the United States, Vol. IX. p. 54.

It is my first wish to see the United States assume and merit the character of *one great Nation*, whose territory is divided into different States merely for more convenient government and the more easy and prompt administration of justice, — just as our several States are divided into counties and townships for the like purposes. Until this be done, the chain which holds us together will be too feeble to bear much opposition or exertion, and we shall be daily mortified by seeing the links of it giving way and calling for repair, one after another. — JOHN JAY, *Letter to John Lowell, May* 10, 1785: Life, by William Jay, Vol. I. p. 190.

He took this occasion to repeat, that, notwithstanding his solicitude to establish a National Government, he never would agree to abolish the State Governments or render them absolutely insignificant. They were as necessary as the General Government, and he would be equally careful to preserve them. — GEORGE MASON, *Speech in the Constitutional Convention, June* 20, 1787: Debates, Madison Papers, Vol. II. pp. 914, 915.

Whether the Constitution be good or bad, the present clause clearly discovers that it is a National Government, and no longer a Confederation: I mean that clause which gives the first hint of the General Government laying direct taxes. — GEORGE MASON, *Speech in the Virginia Convention to ratify the Constitution, June* 4, 1788: Elliot's Debates, (2d edit.,) Vol. III. p. 29.

The Declaration of Independence having provided for the *national* character and the *national* powers, it remained in some mode to provide for the character and powers of the States individually, as a consequence of the dissolution of the colonial system. Accordingly the people of each State set themselves to work, under a recommendation from Congress, to erect a local government for themselves; but in no instance did the people of any State attempt to incorporate into their local system any of those attributes of national authority which the Declaration of Independence had asserted in favor of the United States. — ALEXANDER JAMES DALLAS, *Argument in the Case of Michael Bright and others, in the Circuit Court of the United States, April* 28, 1809: Life and Writings, p. 104.

Hence, while the sovereignty resides inherently and inalienably in the people, it is a perversion of language to denominate the State, as a body politic or government, sovereign and independent. — *Ibid.*, p. 100.

America has chosen to be, in many respects and to many purposes, a Nation; and for all these purposes her government is complete, to all these objects it is competent. The people have declared, that, in the exercise of all powers given for these objects, it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory. The Constitution and laws of a State, so far as they are repugnant to the Constitution and laws of the United States, are absolutely void. These States are constituent parts of the United States; they are members of one great empire. — CHIEF JUSTICE MARSHALL, *Cohens* v. *Virginia*, Wheaton, Rep., Vol. VI. p. 414.

THIS Address was prepared as a lecture, and was delivered on a lecture-tour reaching as far as Milwaukee, Dubuque, and St. Louis. On its delivery in New York, Dr. Francis Lieber was in the chair. It became the subject of various local notice and discussion.

The idea of Nationality had prevailed with Mr. Sumner from the beginning of his public life. In his appeal to Mr. Webster before the Whig State Convention, as early as September 23, 1846, while calling on the eminent Senator and orator to become *Defender of Humanity*, he recognized his received title, *Defender of the Constitution*, as justly earned by the vigor, argumentation, and eloquence with which he had "upheld the Union and that interpretation of the Constitution which makes us a Nation."[1] And from that time he had always insisted that we were a Nation, — believing, that, while many things were justly left to local government, for which the States are the natural organs, yet the great principles of Unity and Human Rights should be placed under central guardianship, so as to be everywhere the same; and this he considered the essence of the Nation. — The word "Federal" Mr. Sumner habitually rejected for "National." Courts and officers under the United States Government he called "National."

[1] *Ante*, Vol. I. pp. 314, 315.

ADDRESS.

MR. PRESIDENT, — At the close of a bloody Rebellion, instigated by hostility to the sacred principles of the Declaration of Independence, and inaugurated in the name of State Rights, it becomes us now to do our best that these sacred principles shall not again be called in question, and that State Rights shall not again disturb the national repose. One terrible war is more than enough; and since, after struggle, peril, and sacrifice, where every household has been a sufferer, we are at last victorious, it is not too much to insist on all possible safeguards for the future. The whole case must be settled now. The constant duel between the Nation and the States must cease. The National Unity must be assured, — in the only way which is practical and honest, — through the principles declared by our fathers and inwoven into the national life.

In one word, the Declaration of Independence must be recognized as a fundamental law, and State Rights, in all their denationalizing pretensions, must be trampled out forever, to the end that we may be, in reality as in name, a Nation.

Are we a Nation? Such is the question I now propose, believing that the whole case is involved in the

answer. Are we a Nation? Then must we have that essential, indestructible unity belonging to a Nation, with all those central, pervasive, impartial powers which minister to the national life; then must we have that central, necessary authority inherent in just government, to protect the citizen in all the rights of citizenship; and then must we have that other central, inalienable prerogative of providing for all the promises solemnly made when we first claimed our place as a Nation.

Words are sometimes things; and I cannot doubt that our country would gain in strength and our people in comprehensive patriotism, if we discarded language which in itself implies certain weakness and possible disunion. Pardon me, if I confess that I have never reconciled myself to the use of the word "Federal" instead of "National." To my mind, our government is not Federal, but National; our Constitution is not Federal, but National; our courts under the Constitution are not Federal, but National; our army is not Federal, but National. There is one instance where this misnomer does not occur. The debt of our country is always *National*, — perhaps because this term promises in advance additional security to the anxious creditor. "Liberty" and "Equality" are more than dollars and cents; they should be National also, and enjoy the same security.

During the imbecility of the Confederation, which was nothing but a league or *fœdus*, the government was naturally called Federal. This was its proper designation. Any other would have been out of place, although even then Washington liked to speak of the Nation. In summoning the Convention which framed

the National Constitution, the States all spoke of the existing government as "Federal." But after the adoption of the National Constitution, completing our organization as one people, the designation was inappropriate. It should have been changed. If not then, it must be now. New capacities require a new name. The word Saviour did not originally exist in the Latin; but St. Augustine, who wrote in this language, boldly used it, saying there was no occasion for it until after the Saviour was born.[1] If among us in the earlier day there was no occasion for the word Nation, there is now. A Nation is born.

The word Nation is suggestive beyond any definition of the dictionary. It awakens an echo second only to that of Country. It is a word of unity and power. It brings to mind intelligent masses enjoying the advantage of organization, for whom there is a Law of Nations, — as there is a Law of Nature, — each nation being a unit. Sometimes uttered vaguely, it is simply an intensive, as in the familiar exaggeration, "only a *nation* louder"; but even here the word furnishes a measure of vastness. In ordinary usage, it implies an aggregation of human beings who have reached such advanced stage of political development that they are no longer a tribe of Nomads, like our Indians, — no longer a mere colony, city, principality, or state, — but they are one people, throbbing with a common life, occupying a common territory, rejoicing in a common history, sharing in common trials, and securing to each the protection of the common power. We have heard,

[1] Sermo CCXCIX. § 6: Opera, ed. Benedict., (Paris, 1836–39,) Tom. V. col. 1785.

also, that a Nation is a people with the consciousness of Human Rights. Well spoke Louis the Fifteenth of France, when this word first resounded in his ears: "What means it? I am king; is there any king but me?" The monarch did not know that the Nation was more than king, all of which his successor learned among the earliest lessons of the Revolution, as this word became the inspiration and voice of France.

The ancients had but one word for State and City; nor did they use the word Nation as it is latterly used. Derived from the Latin *nascor* and *natus*, signifying "to be born" and "being born," it was originally applied to a race or people of common descent and language, but seems to have had no reference to a common government. In the latter sense it is modern. Originally ethnological, it is now political. The French Communists have popularized the kindred word "Solidarity," denoting a community of interests, which is an element of nationality. There is the solidarity of nations together, and also the solidarity of a people constituting one nation, being those who, according to a familiar phrase, are "all in one bottom."

England early became a Nation; and this word seems to have assumed there a corresponding meaning. Sir Walter Raleigh, courtier of Queen Elizabeth, and victim of James the First, who was a master of our language, in speaking of the people of England, calls them "our Nation."[1] John Milton was filled with the same sentiment, when, addressing England and Scotland, he says: "Go on, both hand in hand, *O Nations*, never to be disunited! be the praise and the heroic song of all

[1] History of the World, Book V. ch. 1: Works, (Oxford, 1829,) Vol. VI. p. 4.

posterity!"[1] In the time of Charles the Second, Sir William Temple furnished a precise definition, which foreshadows the definition of our day. According to this accomplished writer and diplomatist, a Nation was "a great number of families, derived from the same blood, born in the same country, and *living under the same government and civil constitutions.*"[2] Here is the political element. Johnson, in his Dictionary, follows Temple substantially, calling it "a people distinguished from another people, generally by their language, original, *or government.*" Our own Webster, the lexicographer, calls it "the body of inhabitants of a country *united under the same government*"; Worcester, "a people born in the same country and *living under the same government*"; the French Dictionary of the Academy, "the totality of persons born or naturalized in a country and *living under the same government.*"[3] Of these definitions, those of Webster and the French Academy are the best; and of the two, that of Webster the most compact.

These definitions all end in the idea of unity under one government. They contemplate political unity, rather than unity of blood or language. Undoubted nations exist without the latter. Various accents of speech and various types of manhood, with the great distinction of color, which we encounter daily, show that there is no such unity here. But this is not required. If the inhabitants are of one blood and one

[1] Of Reformation touching Church Discipline in England, Book II.: Works, (London, 1851,) Vol. III. p. 55.

[2] Essay upon the Original and Nature of Government: Miscellanea, Part I.: Works, (London, 1720,) Vol. I. p. 100.

[3] "La totalité des personnes nées ou naturalisées dans un pays, et vivant sous un même gouvernement."

language, the unity is more complete; but the essential condition is one sovereignty, involving, of course, one citizenship. In this sense Gibbon employs the word, when, describing the people of Italy, — all of whom were recognized as Roman citizens, — he says: "From the foot of the Alps to the extremity of Calabria, all the natives of Italy were born citizens of Rome. Their partial distinctions were obliterated, and they insensibly *coalesced into one great Nation*, united by language, manners, and *civil institutions*, and equal to the weight of a powerful empire."[1] Here dominion proceeding originally from conquest is consecrated by concession of citizenship, and the great historian hails the coalesced people as Nation.

One of our ablest writers of History and Constitutional Law, Professor Lieber, of Columbia College, New York, has discussed this question with learning and power.[2] According to this eminent authority, Nation is something more than a word. It denotes that polity which is the normal type of government at the present advanced stage of civilization, and to which all people tend just in proportion to enlightenment and enfranchisement. The learned Professor does not hesitate to say that such a polity is naturally dedicated to the maintenance of all the rights of the citizen as its practical end and object. It is easy to see that the Nation, thus defined, must possess elements of perpetuity. It is not a quicksand, or mere agglomeration

[1] Decline and Fall of the Roman Empire, ed. Milman, (London, 1846,) Ch. II. Vol. I. p. 37.

[2] See his Essay, as amplified in the successive editions, variously entitled, "The National Polity is the Normal Type of Modern Government: A Fragment"; "Nationalism: A Fragment of Political Science"; and "Fragments of Political Science on Nationalism and Inter-Nationalism": the first two without date, — the last, New York, 1868.

of particles, liable to disappear, but a solid, infrangible crystallization, against which winds and rains beat in vain.

Opposed to this prevailing tendency is the earlier propensity to local sovereignty, which is so gratifying to petty pride and ambition. This propensity, assuming various forms in different ages and countries, according to the degree of development, has always been a species of egotism. When the barbarous islanders of the Pacific imagined themselves the whole world, they furnished an illustration of this egotism in its primitive form. Its latest manifestation has been in State pretensions. But here a distinction must be observed. For purposes of local self-government, and to secure its educational and political blessings, the States are of unquestioned value. This is their true function, to be praised and vindicated always. But *local sovereignty*, whether in the name of State or prince, is out of place and incongruous under a government truly national. It is entirely inconsistent with the idea of Nation. Perhaps its essential absurdity in such a government was never better illustrated than by the homely apologue of the ancient Roman,[1] which so wrought upon the secessionists of his day that they at once returned to their allegiance. According to this successful orator, the different members of the human body once murmured against the "belly," which was pictured very much as our National Government has been, and they severally refused all further coöperation. The hands would not carry food to the mouth; nor would the mouth receive it, if carried; nor would the teeth per-

[1] Menenius Agrippa. Livii Hist. Lib. II. c. 32.

form their office. The rebellion began; but each member soon found that its own welfare was bound up inseparably with the rest, and especially that in weakening the "belly" it weakened every part. Such is the discord of State pretensions. How unlike that unity of which the human form, with heaven-directed countenance, is the perfect type, where every part has its function, and all are in obedience to the divine mandate which created man in the image of God! And such is the Nation.

Would you know the incalculable mischief of State pretensions? The American continent furnishes three different examples, each worthy of extended contemplation. There are, first, our Indians, aborigines of the soil, split into tribes, possessing a barbarous independence, but through this perverse influence kept in constant strife, with small chance of improvement. Each chief is a representative of State pretensions. Turning the back upon union, they turn the back upon civilization itself. There is, next, our neighbor republic, Mexico, where Nature is bountiful in vain, and climate lends an unavailing charm, while twenty-three States, unwilling to recognize the national power, set up their disorganizing pretensions, and chaos becomes chronic. The story is full of darkness and tragedy. The other instance is our own, where sacrifices of all kinds, public and private, rise up in blood before us. Civil war, wasted treasure, debt, wounds, and death are the witnesses. With wailing voice all these cry out against the deadly enemy lurking in State pretensions. But this wail is heard from the beginning of history, saddening its pages from generation to generation.

In ancient times the City-State was the highest type, as in Greece, where every city was a State, proud of its miniature sovereignty. The natural consequences ensued. Alliances, leagues, and confederations were ineffectual against State pretensions. The parts failed to recognize the whole and its natural supremacy. Amidst all the triumphs of genius and the splendors of art, there was no national life, and Greece died. From her venerable sepulchre, with ever-burning funeral lamps, where was buried so much of mortal beauty, there is a constant voice of warning, which sounds across continent and ocean, echoing "Beware!"

Rome also was a City-State. If it assumed at any time the national form, it was only because the conquering republic took to itself all other communities and melted them in its fiery crucible. But this dominion was of force, ending in universal empire, where the consent of the governed was of little account. How incalculably different from a well-ordered Nation, where all is natural, and the people are knit together in self-imposed bonds!

Then came the colossal power of Charlemagne, under whom peoples and provinces were accumulated into one incongruous mass. Here again was universal empire, but there was no Nation.

Legend and song have depicted the paladins that surrounded Charlemagne, fighting his battles and constituting his court. They were the beginning of that Feudal System which was the next form that Europe assumed. The whole country was parcelled among chieftains under the various names of Duke, Count, and Baron, each of whom held a district, great or small, where, asserting a local sovereignty, he revelled in State

pretensions; and yet they all professed a common allegiance. Guizot was the first to remark that Feudalism, taken as a whole, was a confederation, which he boldly likens to what he calls the federal system of the United States. It is true that Feudalism was essentially federal, where each principality exercised a disturbing influence, and unity was impossible; but I utterly deny that our country can fall into any such category, unless it succumbs at last to the dogma of State pretensions, which was the essential element of the feudal confederation.

Feudalism was not a government; it was only a system. During its prevalence, the Nation was unknown. Wherever its influence subsided, the Nation began to appear; and now, wherever its influence still lingers on earth, there the yearnings for national life, instinctive in the popular heart, are for the time suppressed.

Curiously enough, Sweden and Hungary were not brought within the sphere of Feudalism, and these two outlying lands, left free to natural impulses, revealed themselves at an early day as Nations. When the European continent was weakened by anarchy, they were already strong in national life, with an influence beyond their population or means.

Feudalism has left its traces in England; but it was never sufficiently strong in that sea-girt land to resist the natural tendencies to unity, partly from its insular position, and partly from the character of its people. At an early day the seven-headed Heptarchy was changed into one kingdom; but a transformation not less important occurred when the feudal lords were absorbed into the government, of which they became a component part, and the people were represented in

a central Parliament, which legislated for the whole country, with Magna Charta as the supreme law. Then was England a Nation; and just in proportion as the national life increased has her sway been felt in the world.

France was less prompt to undergo this change, for Feudalism found here its favorite home. That compact country, so formed for unity, was the victim of State pretensions. It was divided and subdivided. North and South, speaking the same language, were separated by a difference of dialect. Then came the great provinces, Normandy, Brittany, Burgundy, Provence, Languedoc, and Gascony, with constant menace of resistance and nullification, while smaller fiefs shared the prevailing turbulence. A French barony was an "autonomic government," with a moated town, in contrast with an English barony, which was merged in the Kingdom. Slowly these denationalizing pretensions were subdued; but at last the flag of the French monarchy, — the most beautiful invention of heraldry, — with lilies of gold on a field of azure, and angelic supporters, waved over a united people. From that time France has been a Nation, filled with a common life, burning with a common patriotism, and quickened by a common glory. To an Arab chieftain, who, in barbaric simplicity, asked the number of tribes there, a Frenchman promptly replied, "We are all one tribe."

Spain also triumphed over State pretensions. The Moors were driven from Granada. Castile and Aragon were united under Ferdinand and Isabella. Feudalism was overcome. Strong in the national unity, her kings became lords of the earth. The name of Spain was exalted, and her language was carried to the uttermost

parts of the sea. For her Columbus sailed; for her Cortés and Pizarro conquered. But these adventurous spirits could have done little, had they not been filled with the exuberance of her national life.

Italy has been less happy. The pretensions of Feudalism here commingled with the pretensions of City-States. Petty princes and petty republics, restless with local sovereignty, constituted together a perpetual discord. That beauty which one of her poets calls a "fatal gift" tempted the foreigner. Disunited Italy became an easy prey. Genius strove in the bitterness of despair, while this exquisite land, where History adds to the charms of Nature and gilds anew the golden fields, sank at last to become, in the audacious phrase of Napoleon, simply a geographical name. A checker-board of separate States, it was little else. It had a place on the map, as in the memory, but no place in the present. It performed no national part. It did nothing for imitation or remembrance. Thus it continued, a fearful example to mankind. Meanwhile the sentiment of Nationality began to stir. At last it broke forth like the pent-up lava from its own Vesuvius, and Garibaldi was its conductor. Separate States, renouncing local pretensions, became greater still as parts of the great whole, and Italy stood forth a Nation, to testify against the intolerable jargon of State pretensions. All hail to this heroic revival, where dissevered parts have been brought together, as were those of the ancient Deity, and shaped anew into a form of beauty and power!

But Germany is the most instructive example. Here, from generation to generation, have State pretensions triumphed, perversely postponing that National Unity

which is the longing of the German heart. Stretching from the Baltic to the Adriatic and the Alps, penetrated by great rivers, possessing an harmonious expanse of territory, speaking one language, filled with the same intellectual life, and enjoying a common name, which has been historic from the days of Tacitus, Germany, like France, seems formed for unity. Martin Luther addressed one of his grand letters *An die Deutsche Nation* (To the German Nation); and these words are always touching to Germans as the image of what they desire so much. Thus far the great longing has failed. Even the Empire, where all were gathered under one imperial head, was only a variegated patchwork of States. Feudalism, in its most extravagant pretensions, still prevails. Confederation takes the place of Nationality, and this vast country, with all its elements of unity, is only a discordant conglomerate. North and South are inharmonious, Prussia and Austria representing two opposite sections. Other divisions have been more perplexing. Not to speak of Circles, or groups, each with a diet of its own, which once existed, I mention simply the later division into thirty-nine States, differing in government and in extent, being monarchies, principalities, dukedoms, and free cities, all proportionately represented in a general council or diet, and proportionately bound to the common defence, but every one filled with State egotism. So complete was this disjunction, and such its intolerable pretensions, that internal commerce, the life-blood of the Nation, was strangled. Down to a recent day, each diminutive state had its own custom-house, where the traveller was compelled to exhibit his passport and submit to local levies. This universal obstruction slowly

yielded to a Zollverein, or Customs-Union, under which these barriers were obliterated and customs were collected on the external frontiers. Here was the first triumph of Unity. Meanwhile the perpetual strife between Prussia and Austria broke out in terrible battle. Prussia has succeeded in absorbing several of the smaller states. But the darling passion of the German heart is still unsatisfied. Not in fact, but in aspiration only, is Germany one nation. Patriot Poetry takes up the voice, and, scorning the claims of individual states, principalities, and cities, scorning also the larger claims of Prussia and Austria alike, exclaims, in the spirit of a true Nationality: —

> "That is the German's fatherland
> Where Germans all as brothers glow;
> That is the land;
> All Germany 's thy fatherland."

God grant that the day may soon dawn when all Germany shall be one!

Confessing the necessity of a true national life, we have considered what is a Nation, and how the word itself implies indestructible unity under one government with common rights of citizenship; and then we have seen how this idea has grown with the growth of civilization, slowly conquering the adverse pretensions of States, until at last even Italy became one nation, while Germany was left still struggling for the same victory. And now I come again to the question with which I began.

Are we a Nation? Surely we are not a City-State, like Athens and early Rome in antiquity, or like Florence and Frankfort in modern times; nor, whatever the extent of our territory, are we an Empire cemented

by conquest, like that of later Rome, or like that of Charlemagne; nor are we a Feudal Confederation, with territory parcelled among local pretenders; nor are we a Confederation in any just sense. From the first settlement of the country down to the present time, whether in the long annals of the Colonies or since the Colonies were changed into States, there has been but one authentic voice: now breaking forth in organized effort for Union; now swelling in that majestic utterance of a united people, the Declaration of Independence; now sounding in the scarcely less majestic utterance of the same united people, the opening words of the National Constitution; and then again leaping from the hearts of patriots. All these, at different times and in various tones, testify that we are one people, under one sovereignty, vitalized and elevated by a dedication to Human Rights.

There is a distinction for a long time recognized by German writers, and denoted by the opposite terms *Staatenbund* and *Bundesstaat*, — the former being "a league of states," and the latter "a state formed by a league." In the former the separate states are visibly distinct; in the latter they are lost in unity. And such is the plain condition of our republic.

Of the present thirty-seven States only thirteen were originally Colonies; three are offsets from some of these; all the rest have been founded on territory which was the common property of the people of the United States, and at their own request they have been received into the fellowship of government and citizenship. If on any ground one of the original Thirteen might renounce its obligations to the Union, it would not follow that one of the new States, occupying the

common territory, could do likewise. It is little short of madness to attribute such a denationalizing prerogative to any State, whether new or old. For better or worse, we are all bound together in one indissoluble bond. The National Union is a knot which in an evil hour the sword may cut, but which no mortal power can unloose without the common consent.

From the earliest landing, this knot has been tying tighter and tighter. Two ways it promptly showed itself: first, in the common claim of the rights of British subjects; and, secondly, in the common rights of citizenship coextensive with the Colonies, and the consequent rights of every Colony in every other Colony.

The Colonies were settled separately, under different names, and each had its own local government. But no local government in any Colony was allowed to restrict the rights, liberties, and immunities of British subjects. This was often declared. Above all charters or local laws were the imprescriptible safeguards of Magna Charta, which were common to all the inhabitants. On one occasion, the Legislature of Massachusetts reminded the king's governor of these safeguards in memorable words: "We hope we may without offence put your Excellency in mind of that most grievous sentence of excommunication solemnly denounced by the Church in the name of the sacred Trinity, in the presence of King Henry the Third and the estates of the realm, *against all those who should make statutes, or observe them, being made, contrary to the liberties of Magna Charta.*"[1] Massachusetts spoke for all

[1] Journal of the House of Representatives, p. 133, October 24, 1765. Hutchinson's History of Massachusetts, Vol. III. p. 472.

the Colonies. Enjoyment of common rights was a common bond, constituting an element of nationality. As these rights grew more important, the common bond grew stronger.

The rights of citizenship in the Colonies were derived from common relations to the mother country. No Colonist could be an alien in any other Colony. As British subject he had the freedom of every Colony, with the right of making his home there, and of inheriting lands. Among all the Colonies there was a common and interchangeable citizenship, or *inter-citizenship*. The very rule of the Constitution then began, that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Here was another element of nationality. If not at that time fellow-citizens, all were at least fellow-subjects. Fellowship had begun. Thus in the earliest days, even before Independence, were the Colonists one people, with one sovereignty, afterwards renounced.

Efforts for a common government on this side of the ocean soon showed themselves. The Pilgrims landed at Plymouth in 1620. As early as 1643, only twenty-three years later, there was a confederation under the name of "The United Colonies of New England," formed primarily for the common defence; and here is the first stage of nationality on this continent. In the preamble to the Articles the parties declare: "We, therefore, do conceive it our bounden duty without delay to enter into a present consociation amongst ourselves for mutual help and strength in all our future concernments, that, as in nation and religion, so in other respects, *we*

be and continue One."[1] Better words could not mark the beginning of a nation. A distinguished character of the time, recording the difficulties encountered by the Articles, says: "But, being all desirous of union and studious of peace, they readily yielded each to other in such things as tended to common utility, etc., so as in some two or three meetings *they lovingly accorded.*"[2] Encouraged by "loving accord," another proposition was brought forward in Massachusetts, "for all the English within the United Colonies *to enter into a civil agreement for the maintenance of religion and our civil liberties.*"[3] More than a century elapsed before this aspiration was fulfilled.

Meanwhile the Colonies grew in population and power. No longer merely scattered settlements, they began to act a part in history. Anxious especially against French domination, already existing in Canada and extending along the Lakes to the Mississippi, they came together in Congress at Albany, in 1754, to take measures for the common defence. Delegates were present from seven Colonies, being all north of the Potomac. Here the genius of Benjamin Franklin prevailed. A plan from this master mind provided for what was called a "General Government," administered by a "President-General and Grand Council," where each Colony should have representatives in proportion to its contributions, — Massachusetts and Virginia having seven each, while New York had only four; and the first meeting of the "General Government" was to be at Philadelphia.[4]

[1] Hazard's Historical Collections, Vol. II. p. 2. Palfrey's History of New England, Vol. I. p. 624.

[2] Winthrop, History of New England, ed. Savage, Vol. II. p. 100.

[3] Ibid., p. 160.

[4] Plan of Union: Franklin's Works, ed. Sparks, Vol. III. pp. 36, seqq.

Local jealousy and pretension were then too strong for such a Union: and it found no greater favor in England; for there Union was "dreaded as the keystone of Independence."[1] In defending this plan, Franklin, who had not yet entered into the idea of Independence, did not hesitate to say that he looked upon the Colonies "as so many counties gained to Great Britain,"[2] — employing an illustration which most forcibly suggested actual Unity. Though this experiment failed, it revealed the longing for one Cisatlantic government, and showed how under other auspices it might be accomplished.

Little more than ten years elapsed before the same yearning for common life appeared again in the Colonial Congress at New York, convened in 1765, on the recommendation of Massachusetts, to arrest the tyranny of the Stamp Act and assaults upon the common liberties. Nine Colonies, after deliberation, united in a Declaration of Rights common to all. Here was the inspiration of James Otis, the youthful orator of Freedom, whose tongue of flame had already flashed the cry, "Taxation without representation is tyranny," and that other cry, worthy of perpetual memory, "Equality and the power of the whole, without distinction of color." These were voices that heralded our Nation.

The mother country persisted; and in the same proportion the Colonies were aroused to the necessity of union. Meanwhile that inflexible Republican, Samuel Adams, of Massachusetts, brooding on the perils to Liberty, conceived the idea of what he called "a Congress

[1] Bancroft, History of the United States, Vol. IV. p. 126.

[2] Franklin to Governor Shirley, December 22, 1754: London Chronicle, Feb. 6–8, 1766, Vol. XIX. p. 133; London Magazine, Feb. 1766, Vol. XXXV. p. 95. See also Franklin's Works, ed. Sparks, Vol. III. p. 66.

of American States," out of whose deliberations should come what he boldly proclaimed "an American Commonwealth,"[1] — not several commonwealths, not Thirteen, but One. Here, in a single brilliant flash, was revealed the image of National Unity, while the word "Commonwealth" denoted the common weal which all should share. The declared object of this burning patriot was "to answer the great purpose of preserving our liberties,"[2] — meaning, of course, the liberties of all. Better words could not be chosen to describe a republican government. This was in 1773. Every Colony, catching the echo, stirred with national life. Delegates were appointed, and in 1774 a Congress called "Continental," with a representation from twelve Colonies, was organized at Philadelphia, and undertook to speak in the name of "the good people" of the Colonies. Here was a national act. In the Declaration of Rights which it put forth, — fit precursor of the Declaration of Independence, — it grandly claims, that, by the immutable laws of Nature, the principles of the English Constitution, and the several Charters, all the inhabitants are "entitled to life, liberty, and property," and then announces "that the foundation of English liberty and of all free government is *a right in the people to participate in their legislative council*."[3] Here was a claim of popular rights as a first principle of government. Proceeding from a Congress of all, such a claim marks yet another stage of national life.

The next year witnessed a second Continental Congress, also at Philadelphia, which entered upon a mightier career. Proceeding at once to exercise national pow-

[1] Wells's Life of Samuel Adams, Vol. II. pp. 90, 94. [2] Ibid., p. 94.
[3] Journals of Congress, October 14, 1774, Vol. I. pp. 28, 29.

ers, this great Congress undertook to put the Colonies in a state of defence, authorized the raising of troops, framed rules for the government of the army, commenced the equipment of armed vessels, and commissioned George Washington as "general and commander-in-chief of the army of the United Colonies, and of all the forces now raised or to be raised by them, and of all others who shall voluntarily offer their service and join the said army, for the defence of American liberty." Here were national acts, which history cannot forget, and their object was nothing less than American liberty. It was American liberty which Washington was commissioned to defend. Under these inspirations was our Nation born. The time had now come.

Independence was declared. Here was an act which, from beginning to end, in every particular and all its inspirations, was National, stamping upon the whole people Unity in the support of Human Rights. It was done "in the name and by authority of the good people of these Colonies," called at the beginning "one people," and it was entitled "Declaration by the Representatives of the United States of America in Congress assembled," without a word of separate sovereignty. As a National act it has two distinct features: first, a severance of the relations between the "United Colonies" and the mother country; and, secondly, a declaration of self-evident truths on which the severance was justified and the new Nation founded. It is the "United Colonies" that are declared free and independent States; and this act is justified by the sublime declaration that all men are created equal, with certain inalienable rights, and that to secure these rights governments are insti-

tuted among men, deriving their just powers from the consent of the governed. Here was that "American Commonwealth," the image of National Unity, dedicated to Human Rights, which had enchanted the vision of the early patriot seeking new safeguards for Liberty. Here was a new Nation, with new promises and covenants, never before made. The constituent authority was "the People." The rights it promised and covenanted were the Equal Rights of All; not the rights of Englishmen, but the rights of Man. On this account our Declaration has its great meaning in history; on this account our nation became at once a source of light to the world. Well might the sun have stood still on that day to witness a kindred luminary ascending into the sky!

In this sudden transformation where was the sovereignty? It was declared that the *United* Colonies are and *of right* ought to be free and independent States. It was never declared that the *separate* Colonies were so *of right*. Plainly they never were so *in fact*. Therefore there was no separate sovereignty either of right or in fact. The sovereignty anterior to Independence was in the mother country; afterwards it was in the people of the United States, who took the place of the mother country. As the original sovereignty was undivided, so also was that sovereignty of the people which became its substitute. If authority were needed for this irresistible conclusion, I might find it in the work of the great commentator, Mr. Justice Story, and in that powerful discourse of John Quincy Adams entitled "The Jubilee of the Constitution," in both of which the sovereignty is accorded to the People, and not to the States. Nor should I forget that rarest polit-

ical genius, Alexander Hamilton, who, regarding these things as a contemporary, declared most triumphantly that "the Union had complete sovereignty"; that "the Declaration of Independence was the fundamental constitution of every State"; and, finally, that "the union and independence of these States are blended and incorporated in one and the same act." [1] Such was the great beginning of national life.

A beautiful meditative poet, whose words are often most instructive, confesses that we may reach heights we cannot hold:—

> "And the most difficult of tasks to keep
> Heights which the soul is competent to gain." [2]

Our nation found it so. Only a few days after the great Declaration in the name of "the People," Articles of Confederation were brought forward in the name of "the States." Evidently these were drawn before the Declaration, and they were in the handwriting of John Dickinson, then a delegate from Pennsylvania, whom the eldest Adams calls "the bell-wether of the aristocratical flock," [3] and who had been the orator against the Declaration. Not unnaturally, an opponent of the Declaration favored a system which forgot the constituent sovereignty of the people, and made haste to establish the pretensions of States. These Articles were not readily adopted. There was hesitation in Congress, and then hesitation among the States. At last, on the 1st of March, 1781, Maryland gave a tardy adhesion, and this shadow of a government began. It was a pitiful

[1] The Federalist, ed. J. C. Hamilton, Historical Notice, pp. xii, xiv, lix.
[2] Wordsworth, The Excursion, Book IV. 138, 139.
[3] Letter to Jefferson, November 12, 1813: Works, Vol. X. p. 79.

sight. The Declaration was sacrificed. Instead of "one people," we were nothing but "a league" of States; and our nation, instead of drawing its quickening life from "the good people," drew it from a combination of "artificial bodies"; instead of recognizing the constituent sovereignty of the people, by whose voice Independence was declared, it recognized only the pretended sovereignty of States; and, to complete the humiliating transformation, the national name was called "the style," being a term which denotes sometimes title and sometimes copartnership, instead of unchangeable unity. Such an apostasy could not succeed.

Even before the adoption of this denationalizing framework, its failure had begun. The Confederation became at once a byword and a sorrow. It was not fit for war or peace. It accomplished nothing national. It arrested all the national activities. Each State played the part of the feudal chieftain, selfishly absorbing power and denying it to the Nation. Money could not be collected even for national purposes. Commerce could not be regulated. Justice could not be administered. Rights could not be assured. Congress was without coercive power, and could act only through the local sovereignty. National unity was impossible, and in its stead was a many-headed pretension. The country was lapsing into chaos.

From Boston, which was the early home of the Revolution, had already proceeded a cry for Nationality. A convention of delegates from Massachusetts, Connecticut, and New Hampshire, with Thomas Cushing as President, assembled at Boston in August, 1780, where, among other things, it was recommended "that the Union of these States be fixed in a more solid and

permanent manner, that the powers of Congress be more clearly ascertained and defined, and that the important *national* concerns of the United States be *under the superintendency and direction of one supreme head*," and the word *Nation* is adopted as the natural expression for our unity.[1] But the time had not yet come for this fulfilment.

In the prevailing darkness, two voices made themselves heard, both speaking for National Unity on the foundation of Human Rights. The singular accord between the two, not only in sentiment, but also in language, and in date of utterance, attests concert. One voice was that of Congress, in an Address and Recommendations to the States on the close of the war, bearing date 18th April, 1783, where, urging "effectual provision" for the war debts, as demanded alike by national honor, and the honor of the cause in which they had been contracted, it was said, in words worthy of companionship with the immortal Declaration: "Let it be remembered that it has ever been the pride and boast of America that *the rights for which she contended were the rights of Human Nature.*"[2] The other voice was that of Washington, in a general order, also bearing date 18th April, 1783, announcing the close of the war, where, after declaring his "rapture" in the prospect before the country, he says: "Happy, thrice happy, shall they be pronounced hereafter who have contributed

[1] Proceedings of a Convention of Delegates from several of the New England States, held at Boston, August 3–9, 1780: edited from an original MS. Record in the New York State Library, with an Introduction and Notes, by Franklin B. Hough, Albany, 1867, pp. 50, 51.

[2] Address and Recommendations to the States by the United States in Congress assembled, (Philadelphia, 1783,) p. 9. Journal of Congress, April 26, 1783, Vol. VIII. pp. 194, seqq.

anything, who have performed the meanest office, in erecting this stupendous fabric of Freedom and Empire on the broad basis of Independency, *who have assisted in protecting the rights of Human Nature.*"[1] This appeal was followed by a circular letter to the Governors, where, after announcing that it is for the United States to determine "whether they will be respectable and prosperous or contemptible and miserable *as a Nation*," Washington proceeds to name first among the things essential to national well-being, if not even to national existence, what he calls "an indissoluble union of the States under one federal head"; and he adds, that there must be a forgetfulness of "local prejudices and policies," and that "Liberty" must be at the foundation of the whole structure.[2] Soon afterwards appearing before Congress to surrender the trust committed to him as commander-in-chief, he hailed the United States as a "Nation," and "our dearest country,"[3] — thus embracing the whole in his heart, as for seven years he had defended the whole by his prudence and valor.

An incident of a different character attested the consciousness of National Unity. The vast outlying territory, unsettled at the beginning of the war, and wrested from the British crown by the common blood and treasure, was claimed as a common property, subject to the disposition of Congress for the general good. One by one, the States yielded their individual claims. The cession of Virginia comprehended all that grand region northwest of the Ohio, fertile and rich beyond imagination, where are now prosperous States rejoicing in the Union. All these cessions were on the condition that

[1] Writings of Washington, ed. Sparks, Vol. VIII. pp. 567, 568, Appendix.
[2] Ibid., pp. 441, 443. [3] Ibid., pp. 504, 505.

the lands should "be disposed of for the common benefit of the United States, and be settled and formed into distinct *republican States*." [1] Here was a National act, with the promise of republican government, which was the forerunner of the guaranty of a republican government in the National Constitution.

The best men, in their longing for national unity, all concurred in the necessity of immediate action to save the country. Foremost in time, as in genius, was Alexander Hamilton, who was prompt to insist that Congress should have "complete sovereignty, except as to that part of internal police which relates to the rights of property and life among individuals and to raising money by internal taxes"; and still further, in words which harmonized with the Declaration of Independence, that "the fabric of the American empire ought to rest on the solid basis of the consent of the people." [2] In kindred spirit, Schuyler announced "the necessity of *a supreme and coercive power* in the government of these States." [3] Hamilton and Schuyler were both of New York, which, with such representatives, took the lead in solemn resolutions, which, after declaring that "the situation of these States is in a peculiar manner critical," and that "the present system exposes the common cause to a precarious issue," concluded with a call for "a general convention of the States, specially authorized to revise and amend the Confederation." [4] The movement ended in the National Convention. Other States followed, and Congress recommended it as "the

[1] Resolution of Congress, October 10, 1780: Journal, Vol. VI. p. 215.

[2] The Federalist, ed. J. C. Hamilton, Historical Notice, pp. xxii, lviii.

[3] Ibid., p. xxiv.

[4] Resolutions, July 21, 1782: Hamilton's Works, ed. J. C. Hamilton, Vol. II. pp. 201–204.

most probable means of establishing in these States a firm National Government." [1] Meantime, Noah Webster, whom you know so well as author of the popular Dictionary, in an essay on the situation, published at the time, proposed a new system of government, which should act directly on the individual citizens, and by which Congress should be invested with full powers of legislation within its sphere, and for carrying its laws into effect.[2] But this proposition involved nothing less than a National Government with supreme powers, to which the States should be subordinate.

Here I mention three illustrious characters, who at this time lent the weight of their great names to the national cause,—Jay, Madison, and Washington,—each in his way without a peer. I content myself with a few words from each. John Jay, writing to John Adams, at the time our minister in London, under date of 4th May, 1786, says: "One of the first wishes of my heart" is "to see the people of America become *One Nation in every respect;* for, as to the separate Legislatures, I would have them considered, with relation to the Confederacy, *in the same light in which counties stand* to the State of which they are parts, viz., merely as districts to facilitate the purposes of domestic order and good government." [3] Even in this strong view Jay was not alone. Franklin had already led in likening the colonies to "so many counties." [4] Madison's desires were differently

[1] Journal, February 21, 1787, Vol. XII. p. 17.

[2] Sketches of American Policy, (Hartford, 1785,) Part IV. See also Introduction to Debates in the Federal Convention: Madison Papers, Vol. II. p. 708.

[3] Life, by his Son, William Jay, Vol. I. pp. 249, 250. See also Letter to John Lowell, May 10, 1785: Ibid., p. 190.

[4] See, *ante*, p. 274.

expressed. After declaring against "an individual independence of the States," on the one side, and "a consolidation of the States into one simple republic," on the other side, he sought what he called a "middle ground," which, if varying from that of Jay, was essentially national. He would have "*a due supremacy of the National authority,* and leave in force the local authorities so far as they can be subordinately useful."[1] Here is the definition of a Nation. Washington, in a letter to Jay, dated 1st August, 1786, stated the whole case with his accustomed authority. Insisting upon the importance of "a coercive power," he pleads for national life: "I do not conceive we can exist long as *a Nation* without having lodged somewhere a power which will pervade the whole Union in *as energetic a manner as the authority of the State governments extends over the several States.*" He then adds: "To be fearful of investing Congress, constituted as that body is, with *ample authorities for National purposes,* appears to me the very climax of popular absurdity and madness."[2] Such were the longings of patriots, all filled with a passion for country. But Washington went still further, when, on another occasion, he denounced State sovereignty as "bantling," and even "monster."[3]

The Constituent Convention, often called Federal, better called National, assembled at Philadelphia in May, 1787. It was a memorable body, whose deliberations have made an epoch in the history of government. Jef-

[1] Letter to Edmund Randolph, April 8, 1787: Madison Papers, Vol. II. pp. 631, 632.

[2] Writings, ed. Sparks, Vol. IX. pp. 187, 188.

[3] Letter to John Jay, March 10, 1787: Life of Jay, by his Son, Vol. I. p. 259.

ferson and John Adams were at the time abroad in the foreign service of the country, Samuel Adams was in service at home in Massachusetts, and Jay in New York; but Washington, Franklin, Hamilton, Madison, Gouverneur Morris, George Mason, Wilson, Ellsworth, and Sherman appeared among its members. Washington, by their unanimous voice, became President; and, according to the rules of the Convention, on adjournment, every member stood in his place until the President had passed him. Here is a glimpse of that august body which Art may yet picture. Who would not be glad to look upon Franklin, Hamilton, and Madison standing in their places while Washington passed?

On the first day after the adoption of the rules, Edmund Randolph, of Virginia, opened the great business. He began by announcing that the "Confederation" produced no security against foreign invasion; that the "Federal Government" could not suppress quarrels or rebellion; that the "Federal Government" could not defend itself against encroachments from the States; and then, insisting that the remedy must be found in "the republican principle," concluded with a series of propositions for a National Government, with a "National" Legislature in two branches, a "National" Executive, and a "National" Judiciary, the whole crowned by the guaranty of a republican government in each State. This series of propositions was followed the next day by a simple statement in the form of a resolution, where, after setting forth the insufficiency of "a union of the States merely Federal," or of "treaties among the States as individual sovereignties," it was declared "that *a National Government ought to be established*, consisting

of a supreme legislative, executive, and judiciary." Better words could not have been chosen to express the prevailing aspiration for national life. After ample debate, the resolution in this form was adopted. At a later stage, in seeming deference to mistaken sensibilities, the word "National" gave place to the term "the government of the United States"; but this term equally denoted National Unity, although it did not use the words. The whole clause afterwards found a noble substitute in the Preamble to the Constitution, which is the annunciation of a National Government proceeding directly from the People, like the Declaration of Independence itself.

From the beginning to the end of its debates, the Convention breathed the same patriotic fervor. Amidst all difference in details, and above the persistent and sinister contest for the equal representation of the States, great and small, the sentiment of Unity found constant utterance. I have already mentioned Madison and Hamilton, who wished a National Government; but others were not less decided. Gouverneur Morris began early by explaining the difference between "Federal" and "National." The former implied "a mere compact, resting on the good faith of the parties"; the latter had "a complete and compulsive operation."[1] Constantly this impassioned statesman protested against State pretensions, insisting that the States were originally "nothing more than colonial corporations,"[2] and exclaiming, "We cannot annihilate, but we may perhaps take out the teeth of the serpents."[3] Wilson was a different character, — gentle by nature, but in-

[1] Debates, May 30, 1787 : Madison Papers, Vol. II. p. 748.
[2] Debates, July 7th : Ibid., p. 1049.
[3] Debates, July 5th : Ibid., p. 1030.

formed by studies in jurisprudence and by the education brought from his Scottish home. He was for a National Government, and did not think it inconsistent with the "lesser jurisdictions" of States, which he would preserve;[1] he would not "extinguish these planets," but keep them "within their proper orbits for subordinate purposes."[2] He was too much of a jurist to admit, "that, when the Colonies became independent of Great Britain, they became independent also of each other," and he insisted that they became independent, "not individually, but unitedly."[3] Elbridge Gerry, of Massachusetts, was as strong on this point as Gouverneur Morris, insisting that "we never were independent States, were not such now, and never could be, even on the principles of the Confederation."[4] Rufus King, also of Massachusetts, touched a higher key, when he wished that "every man in America" should be "secured in all his rights," and that these should not be "sacrificed to the phantom of State sovereignty."[5] Good words, worthy of him who in the Continental Congress moved the prohibition of Slavery in the national territories.[6] And Charles Pinckney, of South Carolina, said, in other words of precious significance, that "every freeman has a right to *the same protection and security*," and then again, that "equality is the leading feature of the United States."[7] Under such influences the Constitution was adopted by the Convention.

[1] Debates, June 19, 1787: Madison Papers, Vol. II. pp. 904, 905.
[2] Debates, June 7th: Ibid., p. 817.
[3] Debates, June 19th: Ibid., p. 907.
[4] Debates, June 29th: Ibid., p. 995.
[5] Debates, June 30th: Ibid., p. 1010; see also p. 1011.
[6] March 16, 1785: Journal, Vol. X. p. 79.
[7] Debates, June 25th: Madison Papers, Vol. II. pp. 946, 950.

It is needless to dwell on its features, all so well known; but there are certain points not to be disregarded now. There is especially the beginning. Next after the opening words of the Declaration of Independence, the opening words of the Constitution are the grandest in history. They sound like a majestic overture, fit prelude to the transcendent harmonies of National life on a theatre of unexampled proportions. Though familiar, they cannot be too often repeated; for they are in themselves an assurance of popular rights and an epitome of National duties: "*We, the people of the United States*, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Thus by the people of the United States was the Constitution ordained and established; not by the States, nor even by the people of the several States, but by *the people of the United States* in aggregate individuality. Nor is it a league, alliance, agreement, compact, or confederation; but it is a Constitution, which in itself denotes an indivisible unity under one supreme law, permanent in character; and this Constitution, thus ordained and established, has for its declared purposes nothing less than liberty, justice, domestic tranquillity, the common defence, the general welfare, and a more perfect union, all essentially National, and to be maintained by the National arm. The work thus begun was completed by three further provisions: first, the lofty requirement that "the United States shall guaranty to every State in this Union a republican form of government," — thus sub-

jecting the States to the presiding judgment of the Nation, which is left to determine the definition of a republican government; secondly, the practical investiture of Congress with authority "to make all laws which shall be necessary and proper for carrying into execution all the powers vested by this Constitution in the Government of the United States, or in any department or officer thereof,"—thus assuring the maintenance of the National Government, and the execution of its powers through a faithful Congress chosen by the people; and, thirdly, the imperial declaration, that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be *the supreme law of the land*, and the judges in every State shall be bound thereby, *anything in the Constitution or laws of any State to the contrary notwithstanding*,"—thus forever fixing the supremacy of the National Government on a pinnacle above all local laws and constitutions. And thus did our country again assume the character and obligations of a Nation. Its first awakening was in the Declaration of Independence; its second was in the National Constitution.

On its adoption, the Constitution was transmitted to Congress with a letter from Washington, where, among other things, it is said that "in all our deliberations we kept steadily in our view that which appears to us the greatest interest of every true American, *the consolidation of our Union*, in which is involved our prosperity, felicity, safety, perhaps our National existence."[1]

[1] Journal of Congress, September 28, 1787, Vol. XII. p. 165.

Enough that this letter is signed "George Washington"; but it was not merely the expression of his individual sentiments. It was unanimously adopted by the Convention, on the report of the committee that made the final draught of the Constitution itself, so that it must be considered as belonging to this great transaction. By its light the Constitution must be read. If anybody is disposed to set up the denationalizing pretensions of States under the National Constitution, let him bear in mind this explicit declaration, that, throughout all the deliberations of the Convention, the one object kept steadily in view was *the consolidation of our Union.* Such is the unanimous testimony of the Convention, authenticated by George Washington.

The Constitution was discussed next in the States. It was vindicated as creating a National Government, and it was opposed also on this very ground. Thus from opposite quarters comes the concurring testimony. In Connecticut, Mr. Johnson, who had been chairman of the committee that reported the final draught, said, in reply to inquiries of his constituents, that the Convention had "gone upon entirely new ground: they have formed *one new Nation* out of the individual States." [1] George Mason, of Virginia, proclaimed at home that "the Confederation of the States was entirely changed into *one consolidated government*," — that it was "a *National* government, and no longer a Confederation." [2] Patrick Henry, in his vigorous opposition, testified to the completeness with which the work had been accomplished. Inquiring by what authority the Convention assumed to make such a government,

[1] Works of Daniel Webster, Vol. III. p. 474.
[2] Elliot's Debates, (2d edit.,) Vol. III. p. 29.

he exclaimed: "That this is a consolidated government is demonstrably clear. . . . . Give me leave to demand, What right had they to say, *We, the people?* . . . . Who authorized them to speak the language of *We, the people,* instead of *We, the States?* . . . . If the States be not the agents of this compact, it must be one great consolidated National government of the people of all the States."[1] Then again the same fervid orator declared, with infinite point, "The question turns, Sir, on that poor little thing, the expression, *We, the people,* instead of *the States.*"[2] Patrick Henry was right. The question did turn on that grand expression, *We, the people,* in the very frontispiece of the Constitution, filling the whole with life-giving power; and so long as it stands there, the denationalizing pretensions of States must shrink into littleness. Originally "one people" during colonial days, we have been unalterably fixed in this condition by two National acts: first, the Declaration of Independence, and then again, the National Constitution. Thus is doubly assured the original unity in which we were born.

Other tokens of Nationality, like the air we breathe, are so common that they hardly attract attention; but each has a character of its own. They belong to the "unities" of our nation.

1. There is the National Flag. He must be cold indeed, who can look upon its folds rippling in the breeze without pride of country. If in a foreign land the flag is companionship, and country itself, with all its endearments, who, as he sees it, can think of a State merely? Whose eyes, once fastened upon its radiant

[1] Elliot's Debates, Vol. III. p. 22. [2] Ibid., p. 44.

trophies, can fail to recognize the image of the whole Nation? It has been called "a floating piece of poetry"; and yet I know not if it have an intrinsic beauty beyond other ensigns. Its highest beauty is in what it symbolizes. It is because it represents all, that all gaze at it with delight and reverence. It is a piece of bunting lifted in the air; but it speaks sublimely, and every part has a voice. Its stripes of alternate red and white proclaim the original *union* of thirteen States to maintain the Declaration of Independence. Its stars of white on a field of blue proclaim that *union* of States constituting our national constellation, which receives a new star with every new State. The two together signify Union, past and present. The very colors have a language, officially recognized by our fathers. White is for purity; red, for valor; blue, for justice. And all together, bunting, stripes, stars, and colors, blazing in the sky, make the flag of our country, to be cherished by all our hearts, to be upheld by all our hands.

Not at once did this ensign come into being. Its first beginning was in the camp before Boston, and it was announced by Washington in these words: "The day which gave being to the new army, we hoisted the *Union flag*, in compliment to the United Colonies."[1] The National forces and the National flag began together. Shortly afterwards, amidst the acclamations of the people, a fleet of five sail left Philadelphia, according to the language of the time, "under the display of a *Union flag* with thirteen stripes."[2] This was probably the same flag, not yet matured into its present form. In its corner, where are now the stars, were the

[1] Hamilton's History of the National Flag of the United States, p. 55.
[2] Ibid., pp. 65, 66.

crosses of St. George and St. Andrew, red and white, originally representing England and Scotland, and when conjoined, after the union of those two countries, known as "the Union." To these were added thirteen stripes, alternate red and white, and the whole was hailed at the time as the Great Union Flag. The States, represented by the stripes, were in subordination to the National Unity, represented by the two crosses. But this form did not continue long. By a resolution adopted 14th June, 1777, and made public 3d September, 1777, Congress determined "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that *the union* be thirteen stars, white in a blue field, representing a new constellation."[1] Here the crosses of St. George and St. Andrew gave place to white stars in a blue field; the familiar symbol of British union gave place to another symbol of union peculiar to ourselves; and this completed the national flag, which a little later floated at the surrender of Burgoyne. Long afterward, in 1818, it was provided by Congress that a star be added on the admission of a new State, "to take effect on the fourth day of July next succeeding such admission."[2] Thus, in every respect, and at each stage of its history, the National Flag testifies to the National Unity. The whole outstretched, indivisible country is seated in its folds.

There is a curious episode of the national flag, which is not without value. As far back as 1754, Franklin, while attempting a union of the Colonies, pictured the principal ones in a wood-cut under the device of a snake divided into eight parts marked with their initials, and under the disjointed whole the admonitory

[1] Hamilton's History of the National Flag, p. 30. [2] Ibid., p. 110.

motto, "*Join or die*," — thus indicating the paramount necessity of Union. In the heats of the Revolutionary discussion, a similar representation of all the Thirteen Colonies was adopted as the head-piece of newspapers, and was painted on banners; but when the Union was accomplished, the divisions and initials were dropped, and the snake was exhibited whole, coiled in conscious power, with thirteen rattles, and under it another admonitory motto, "*Don't tread on me*," — being a warning to the mother country.[1] This flag was yellow, and it became the early standard of the Revolutionary navy, being for the first time hoisted by Paul Jones with his own hands. It had a further lesson. A half-formed additional rattle was said by Franklin "to represent the province of Canada," and the wise man added, that "the rattles are united together so as never to be separated but by breaking them to pieces." Thus the snake at one time pictured the necessity of Union, and at another time its indissoluble bond.[2] But these symbols were all in harmony with the national flag, which, from its first appearance, in all its forms, pictured the common cause.

2. There is next the National Motto, as it appears on the national seal and on the national money. A common seal and common money are signs of National Unity. In each the supreme sovereignty of the Nation is manifest. The first is like the national flag, and stands for the Nation, especially in treaties with foreign powers. The second is a national convenience, if not necessity, taking its distinctive character from the Nation,

[1] For the original of these devices see the Pennsylvania Gazette, May 9, 1754; copies of the others are presented in Hamilton's History of the National Flag, Plate II.

[2] Hamilton's History of the National Flag, pp. 72–79.

so that everywhere it is a representative of the Nation. Each has the same familiar motto, *E pluribus unum*, — "From many one." Its history attests its significance.

On the 4th of July, 1776, the very day of Independence, Benjamin Franklin, John Adams, and Thomas Jefferson were appointed a committee to prepare a device for a great seal. They were of the identical committee that had reported the Declaration of Independence itself. Their report on the seal was made 20th August, 1776; and here we first meet the national motto, in such entire harmony with the Declaration, making us "one people." Questions of detail intervened, and no conclusion was reached until 20th June, 1782, when the present seal was adopted, being the American bald eagle, with the olive-branch in one talon and a bundle of thirteen arrows in the other, and in his beak a scroll, bearing the inscription, *E pluribus unum*. Familiar as these Latin words have become, — so that they haunt the memory of manhood, youth, and childhood alike, — it is not always considered how completely and simply they tell the story of our national life. Out of Many Colonies was formed One Nation. Former differences were merged in this unity. No longer Many, they were One. The Nation by its chosen motto repeats perpetually, "We are One"; and the Constitution echoes back, "We, the people of the United States."

3. There is next the National Name, which of itself implies National Unity. The States are not merely allied, associated, coalesced, confederated, but they are *United*, and the Constitution, formed to secure a more perfect union, is "for the *United* States of America," which term was used as the common name of the Nation.

A regret has been sometimes expressed by patriots and by poets, that some single term was not originally adopted, which of itself should exclude every denationalizing pretension, and be a talisman for the heart to cherish and for the tongue to utter, — as when Nelson gave his great watchword at Trafalgar, "*England* expects every man to do his duty." Occasionally it is proposed to call the country *Columbia,* and thus restore to the great discoverer at least part of the honor taken from him when the continent was misnamed *America. Alleghania* has also been proposed; but this word is too obviously a mere invention, besides its unwelcome suggestion of Alligator. Another proposition has been *Vinland,* being the name originally given by the Northmen, four centuries before Christopher Columbus. Professor Lieber, on one occasion, called the nation *Freeland,* a name to which it will soon be entitled. Even as a bond of union, such a name would not be without value. As long ago as Herodotus, it was said of a certain people,[1] that they would have been the most powerful in the world, if they had been united; but this was impossible, from the want among themselves of a common name.

Forgetting that the actual name implies Unity, and, when we consider its place in the preamble of the National Constitution, that it implies Nationality also, the partisans of State pretensions argue from it against even the idea of country; and here I have a curious and authentic illustration. In reply to an inquirer,[2] who wished a single name, Mr. Calhoun exclaimed: "Not at all; we have no name because we ought to have none;

[1] The Thracians: Herodotus, Lib. V. c. 3.

[2] Dr. Francis Lieber, who narrated the incident to Mr. Sumner.

we are only States united, and have no country." Alas, if it be so! — if this well-loved land, for which so many have lived, for which so many have died, is not our country! But this strange utterance shows how completely the poison of these pretensions had destroyed the common sense, as well as the patriotism, of this much-mistaken man.

Names may be given by sovereign power to new discoveries or settlements; but, as a general rule, they grow out of the soil, they are autochthonous. Even Augustus, when ruling the Roman world, confessed that he could not make a new word,[1] and Plato tells us that "a creator of names is the rarest of human creatures."[2] Reflecting on these things, we may appreciate something of the difficulty in the way of a new name at the formation of the National Constitution. As this was little more than a transcript of prevailing ideas and institutions, it was natural to take the name used in the Declaration of Independence.

And yet it must not be forgotten that there was a name of different character which was much employed. Congress was called "Continental," the army "Continental," the money "Continental," — a term certainly of unity, as well as vastness. But there was still another national designation, accepted at home and abroad. Our country was called "America," and we were called "Americans." Here was a natural, unsought, and instinctive name, — a growth, and not a creation, — implying national unity and predominance, if not exclusive power, on the continent. It was used not occasionally or casually, but constantly, — not merely

[1] Locke, Essay concerning Human Understanding, Book III. ch. 2, § 8.
[2] Cratylus, 389 A.

in newspapers, but in official documents. Not an address of Congress, not a military order, not a speech, which does not contain this term, at once so expansive and so unifying. At the opening of the first Continental Congress, Patrick Henry, in a different mood from that of a later day, announced the national unity under this very name. Declaring the boundaries of the several Colonies effaced, and the distinctions between Virginians, Pennsylvanians, New-Yorkers, and New-Englanders as no more, he exclaimed, in words of comprehensive patriotism, "I am not a Virginian, but an *American.*" [1] Congress took up the strain, and commissioned Washington as commander-in-chief of the armies "for the defence of *American* liberty"; [2] and Washington himself, in his first general order at Cambridge, assuming his great command, announced that the armies were "for the support and defence of the liberties of *America*"; [3] and in a letter to Congress, just before the Battle of Trenton, he declared that he had labored "to discourage all kinds of local attachments and distinctions of country, *denominating the whole by the greater name of American.*" [4] Then at the close of the war, in its immortal Address, fit supplement to the Declaration of Independence, Congress said: "Let it be remembered that it has ever been the pride and boast of *America* that the rights for which she contended were the rights of Human Nature." [5] Washington again, in his letter to Congress communicating the National Constitution, says,

[1] Diary of John Adams: Works, Vol. II. p. 367.

[2] Journal, June 17, 1775, Vol. I. p. 122.

[3] Writings, ed. Sparks, Vol. III. p. 491, Appendix.

[4] Letter to the President of Congress, December 20, 1776: Ibid., Vol. IV. p. 236.

[5] See, *ante*, p. 31.

in other words, which, like those of Congress, cannot be too often quoted, that "the *consolidation of our Union*" is "the greatest interest of *every true American.*"[1] Afterwards, in his Farewell Address, which from beginning to end is one persuasive appeal for nationality, after enjoining upon his fellow-citizens that "*unity of government* which constitutes them *one people*," he gives to them a national name, and this was his legacy: "*The name of American, which belongs to you in your national capacity,* must always exalt the just pride of patriotism more than any appellation derived from local discriminations."[2] Thus did Washington put aside those baneful pretensions under which the country has suffered, even to the extent of adopting a National Name, which, like the Union itself, should have a solid coercive power.

It is not impossible that in the lapse of time history will vindicate the name adopted by Washington, which may grow with the Republic, until it becomes the natural designation of one country. Our fathers used this term more wisely than they knew; but they acted under Providential guidance. Is it not said of the stars, that God "calleth them all by names, by the greatness of His might"?[3] Is it not declared also that He will make him who overcometh a pillar in the temple, and give to him a "new name"?[4] So, as our stars multiply, and the nation overcometh its adversaries, persuading all to its declared principles, everywhere on the continent, it will become a pillar in the temple, and the name of the continent itself will be needed to declare alike its unity and its power.

[1] Journal of Congress, September 28, 1787, Vol. XII. p. 165.
[2] Writings, ed. Sparks, Vol. XII. p. 218.
[3] Isaiah, xl. 26.
[4] Revelation, iii. 12.

4. To these "unities," derived from history and the heart of the people, may be added another, where Nature is the great teacher. I refer to the geographical position and configuration of our country, if not of the whole continent, marking it for one nation. Unity is written upon it by the Almighty hand. In this respect it differs much from Europe, where, for generations, seas, rivers, and mountains kept people apart, who had else, "like kindred drops, been mingled into one." There is no reason why they should not commingle here. Nature in every form is propitious. Facility of intercourse, not less than common advantage, leads to unity: both these are ours. Here are navigable rivers, numerous and famous, being so many highways of travel, and a chain of lakes, each an inland sea. Then there is an unexampled extent of country adapted to railways; and do not forget that with the railway is the telegraph, using the lightning as its messenger, so that the interrogatory to Job is answered, "Canst thou send lightnings that they may go?"[1] The country is one open expanse, from the frozen Arctic to the warm waters of the Gulf, and from the Atlantic to the Rocky Mountains,—and there already science supplies the means of overcoming this barrier, which in other days would have marked international boundaries. The Pacific Railway will neutralize these mountains, and complete the geographical unity of the continent. The slender wire of the telegraph, when once extended, is an indissoluble tie; the railway is an iron band. But these depend upon opportunities which Nature supplies, so that Nature herself is one of the guardians of our nation.

He has studied history poorly, and human nature no

[1] Job, xxxviii. 35.

better, who imagines that this broad compacted country can be parcelled into different nationalities. Where will you run the thread of partition? By what river? Along what mountain? On what line of latitude or longitude? Impossible. No line of longitude or latitude, no mountain, no river, can become the demarcation. Every State has rights in every other State. The whole country has a title, which it will never renounce, in every part, whether the voluminous Mississippi as it pours to the sea, or that same sea as it chafes upon our coast. As well might we of the East attempt to shut you of the West from the ocean as you attempt to shut us from the Mississippi. The ocean will always be yours as it is ours, and the Mississippi will always be ours as it is yours.

Our country was planned by Providence for a united and homogeneous people. Apparent differences harmonize. Even climate, passing through all gradations from North to South, is so tempered as to present an easy uniformity from the Atlantic to the Rocky Mountains. Unmeasured supplies of all kinds, mineral and agricultural, are at hand, — the richest ores and the most golden crops, with the largest coal-fields of the world below and the largest corn-fields of the world above. Strabo said of ancient Gaul, that, by its structure, with its vast plains and considerable rivers, it was destined to become the theatre of a great civilization.[1] But the structure of our country is more auspicious. Our plains are vaster and our rivers more considerable, furnishing a theatre grander than any imagined by the Greek geographer. It is this theatre, thus appointed by Nature, which is now open for the good of mankind.

[1] Geographica, Lib. IV. cap. 1, §§ 2, 14.

Here I stop, to review the field over which we have passed, and to gather its harvest into one sheaf. Beginning with the infancy of the Colonies, we have seen how, with different names and governments, they were all under *one sovereignty*, with common and interchangeable rights of citizenship, so that no British subject in one Colony could be made an alien in any other Colony; how, even at the beginning, longings for a common life began, showing themselves in "loving accord"; how Franklin regarded the Colonies "as so many counties"; how the longings increased, until, under the pressure of the mother country, they broke forth in aspiration for "an American Commonwealth"; how they were at last organized in a Congress, called, from its comprehensive character, "Continental"; how, in the exercise of powers derived from "the good people," and in their name, the Continental Congress put forth the Declaration of Independence, by which the sovereignty of the mother country was forever renounced, and we were made "one people," solemnly dedicated to Human Rights, and thus became a Nation; how the undivided sovereignty of all was substituted for the undivided sovereignty of the mother country, embracing all the States as the other sovereignty had embraced all the Colonies; how, according to Franklin, the States were locked together, "so as never to be separated, but by breaking them to pieces"; how in an evil hour the Confederation was formed in deference to denationalizing pretensions of the States; how the longings for national life continued, and found utterance in Congress, in Washington, and in patriot compeers; how Jay wished the States should be like "counties"; how Washington denounced State sovereignty as "bantling" and

"monster"; how at last a National Convention assembled, with Washington as President, where it was voted that "a National Government ought to be established"; how in this spirit, after ample debate, the National Constitution was formed, with its preamble beginning "We, the people," with its guaranty of a republican government to all the States, with its investiture of Congress with all needful powers for the maintenance of the Government, and with its assertion of supremacy over State constitutions and laws; how this Constitution was commended by Washington in the name of the Convention as "the consolidation of our Union"; how it was vindicated and opposed as creating a National Government; how on its adoption we again became a Nation; then how our nationality has been symbolized in the National Flag, the National Motto, and the National Name; and, lastly, how Nature, in the geographical position and configuration of the country, has supplied the means of National Unity, and written her everlasting guaranty. And thus do I bind the whole together into one conclusion, saying to all, We are a Nation.

Nor is this all. Side by side with the growth of National Unity was a constant dedication to Human Rights, which showed itself not only in the Declaration of Independence, with its promises and covenants, but in the constant claim of the rights of Magna Charta, the earlier cries of Otis, the assertion by the first Continental Congress of the right of the people "to participate in their legislative council," the commission of Washington as commander-in-chief "for the defence of American liberty," and the first general order of Washington, on taking command of his forces, where he ral-

lies them to this cause; also in the later proclamation of Congress, at the close of the Revolution, that the rights contended for had been "the rights of Human Nature," and the farewell general order of Washington, on the same occasion, where the contest is characterized in the same way: so that Human Rights were the beginning and end of the war, while the nation, as it grew into being, was quickened by these everlasting principles, and its faith was plighted to their support.

As a Nation, with a place in the family of nations, we have the powers of a nation, with corresponding responsibilities. Whether we regard these powers as naturally inhering in the nation, or as conferred upon it by those two title-deeds, the Declaration of Independence and the National Constitution, the conclusion is the same. From Nature, and also from its title-deeds, our nation must have all needful powers: first, for the national defence, foremost among which is the power to uphold and defend the national unity; secondly, for the safeguard of the citizen in all his rights of citizenship, foremost among which is equality, the first of rights, so that, as all owe equal allegiance, all shall enjoy equal protection; and, thirdly, for the support and maintenance of all the promises made by the nation, especially at its birth, being baptismal vows which cannot be disowned. These three powers are essentially national. They belong to our nation by the very law of its being and the terms of its creation. They cannot be neglected or abandoned. Every person, no matter what his birth, condition, or color, who can raise the cry, "I am an American citizen," has a right to require at the hands of the nation, that it shall

do its utmost, by all its central powers, to uphold the national unity, to protect the citizen in the rights of citizenship, and to perform the original promises of the nation. Failure here is apostasy and bankruptcy combined.

It is vain to say that these requirements are not expressly set down in the National Constitution. By a law existing before this title-deed, they belong to the essential conditions of national life. If not positively nominated in the Constitution, they are there in substance; and this is enough. Every word, from "We, the people," to the signature, "George Washington," is instinct with national life, and there is not a single expression taking from the National Government any inherent power. From this "nothing" in the Constitution there can come nothing adverse. But there has always been a positive injunction on the nation to guaranty "a republican form of government" to all the States; and who can doubt, that, in the execution of this guaranty, the nation may exercise all these powers, and provide especially for the protection of the citizen in all the rights of citizenship? There are also recent Amendments, abolishing slavery, and expressly securing "the privileges and immunities of citizens" against the pretensions of States. Then there is the Declaration of Independence itself, which is the earlier title-deed. By that sacred instrument we were declared "one people," with liberty and equality for all, and then, fixing forever the rights of citizenship, it was announced that all just government was derived only from "the consent of the governed." Come weal or woe, that great Declaration must stand forever. Other things may fail, but this cannot fail. It is immortal as the nation itself.

It is part of the nation, and the part most worthy of immortality. By it the National Constitution must be interpreted; or rather, the two together are the Constitution, — as Magna Charta and the Bill of Rights together are the British Constitution. By the Declaration our nation was born and its vital principles were announced; by the Constitution the nation was born again and supplied with the machinery of government. The two together are our National Scriptures, each being a Testament.

Against this conclusion there has been from the beginning one perpetual pretension in the name of States. The same spirit which has been so hostile to national unity in other countries, which made each feudal chief a petty sovereign, which for a long time convulsed France, which for centuries divided Italy, and which, unhappily, still divides Germany, has appeared among us. Assuming that communities never "sovereign" while colonies, and independent only by the national power, had in some way, by some sudden hocus-pocus, leaped into local sovereignty, and forgetting also that two sovereignties cannot coexist in the same place, as, according to the early dramatist,

"Two kings in England cannot reign at once," [1]

the States insisted upon sovereign powers justly belonging to the Nation. Long ago the duel began. The partisans of State pretensions, plausibly professing to *decentralize* the Government, have done everything possible to *denationalize* it. In the name of self-government, they have organized local lordships hostile to Human

[1] Marlow, Edward the Second, Act V. Sc. 1.

Rights; in the name of the States, they have sacrificed the Nation.

This pretension, constantly showing itself, has broken out on three principal occasions. The first was in the effort of Nullification, which occurred in 1832, where, under the lead of Mr. Calhoun, South Carolina attempted to nullify the Revenue Acts of Congress, or, in other words, to declare them void within her limits. After encountering the matchless argument of Daniel Webster, enforced by his best eloquence, Nullification was blasted by the thunderbolt of Andrew Jackson, who, in his Proclamation, as President, thus exposed it, even in the form of Secession, which it assumed at a later day: "Each State, having expressly parted with so many powers as to constitute jointly with the other States *a single nation*, cannot from that period possess any right to secede, because such secession does not break a league, but destroys the unity of a nation."[1] The pretension next showed itself in the Rebellion; and now that the Rebellion is crushed, it reappears in still another form, by insisting that each State at its own will may disregard the universal rights of the citizen, and apply a discrimination according to its own local prejudices, — thus within its borders nullifying the primal truths of the Declaration of Independence. Here again do State pretensions, in their anarchical egotism, interfere with the National Unity.

The pretensions of States have found their ablest and frankest upholder in John C. Calhoun. I take a single instance, on account of its explicitness. In reply to a Northern Senator, the defender of Slavery said: —

[1] Proclamation, December 10, 1832: Executive Documents, 22d Cong. 2d Sess., H. of R., No. 45, p. 85.

"Now let me tell the Senator that the doctrines which we advocate are the result of the fullest and most careful examination of our system of government, and that our conviction that we constitute *an Union, and not a Nation*, is as strong and as sincere as that of the Senator or any other in the opposite opinion."

"We are as devoted to the Union as any portion of the American people (I use the phrase as meaning the people of the Union); but we see in a national consolidated government evils innumerable to us. Admit us to be a Nation and not an Union, and where would we stand? *We are in the minority.*"[1]

Evidently, in that minority he saw the doom of Slavery.

Local self-government, whether in the town, county, or State, is of incalculable advantage, supplying the opportunities of political education, and also a local administration adapted precisely to local wants. On this account the system has been admired by travellers from abroad, who have found in our "town meetings" the nurseries of the Republic, and have delighted in local exemption from central supervisorship. De Tocqueville, who journeyed here, has recorded his authoritative praise, — and Laboulaye, who has visited us only in his remarkable studies, unites with De Tocqueville. Against that exacting centralization, absorbing everything, of which Paris is the example, I oppose the American system of self-government, which leaves the people to themselves, subject only to the paramount conditions of national life. But these conditions can-

[1] Speech in the Senate, in Reply to Mr. Simmons, of Rhode Island, February 20, 1847: Works, Vol. IV. pp. 358, 357.

not be sacrificed. No local claim of self-government can for a moment interfere with the supremacy of the Nation, in the maintenance of Human Rights.

According to the wisdom of Plutarch, we must shun those pestilent persons who would "carry trifles to the highest magistrate," and, in the same spirit, reject that pestilent supervisorship which asserts a regulating power over local affairs, and thus becomes a giant intermeddler. Let these be decided at home, in the States, counties, and towns to which they belong. Such is the genius of our institutions. This is the precious principle of self-government, which is at once educator and agency. In the former character, it is an omnipresent schoolmaster; in the latter, it is a suit of chain-armor, which, from flexibility, is adapted to the body of the nation, so that the limbs are free. Each locality has its own way in matters peculiar to itself. But the rights of all must be placed under the protection of all; nor can there be any difference in different parts of the country. Here the rule must be uniform, and it must be sustained by the central power radiating to every part of the various empire. This is according to the divine Cosmos, which in all its spaces is pervaded by one universal law. It is the rule of Almighty Beneficence, which, while leaving human beings to the activities of daily life and the consciousness of free-will, subjects all to the same commanding principles. Such centralization is the highest civilization, for it approaches the nearest to the heavenly example. Call it imperialism, if you please: it is simply the imperialism of the Declaration of Independence, with all its promises fulfilled. It is rendering unto Cæsar the things that are Cæsar's. Already by cen-

tral power Slavery has been abolished. Already by central power all have been assured in the equality of *civil* rights.

> "Two truths are told,
> As happy prologues to the swelling act
> Of the imperial theme."

It remains now that by central power all should be assured in the equality of *political* rights. This does not involve necessarily what is sometimes called the "regulation" of the suffrage by the National Government, although this would be best. It simply requires the abolition of any discrimination among citizens, inconsistent with Equal Rights. If not by Act of Congress, let it be by a new Amendment of the Constitution; but it must be at once. Until this is done, we leave undone what ought to be done, and, in pitiable failure to perform a national duty, justify the saying that "there is no health in us." The preposterous pretension, that color, whether of the hair or of the skin, or that any other unchangeable circumstance of natural condition may be made the "qualification" of a voter, cannot be tolerated. It is shocking to the moral sense, and degrading to the understanding.

As in the Nation there can be but one sovereignty, so there can be but one citizenship. The unity of sovereignty finds its counterpart and complement in the unity of citizenship, and the two together are the tokens of a united people. Thus are the essential conditions of national life all resolved into three, — *one sovereignty, one citizenship, one people.*

I conclude as I began. The late Rebellion against the nation was in the name of State Rights; therefore

State Rights in their denationalizing pretensions must be overthrown. It proceeded from hostility to the sacred principles of the Declaration of Independence; therefore must these sacred principles be vindicated in spirit and in letter, so that hereafter they shall be a supreme law, coëqual with the Constitution, in whose illumination the Constitution must be read, and they shall supply the final definition of a Republic for guidance at home and for example to mankind.

In this great change we follow Nature and obey her mandate. By irresistible law, water everywhere seeks its level, and finds it; and so, by law as irresistible, man seeks the level of every other man in rights, and will find it. Human passions and human institutions are unavailing to arrest it, as Nature is stronger than man, and the Creator is mightier than the creature. The recognition of this law is essential to the national cause; for so you will work with Nature rather than against it, and at the same time in harmony with the Declaration of Independence. Here I borrow a word from Locke, who, in his Essay "Of the Conduct of the Understanding," says, that, in dealing with propositions, we must always examine upon what they "bottom."[1] Now, in dealing with the Rebellion, we find, that, though in the name of State Rights, it "bottomed" on opposition to National Law and open denial of the self-evident truths declared by our fathers, especially of that central truth which Abraham Lincoln, at Gettysburg, in the most touching speech of all history, thus announces: "Fourscore and seven years ago, our fathers brought forth upon this continent a new Nation, conceived in Liberty, and dedicated to the proposition that *all men are cre-*

[1] Section 24.

ated Equal."[1] Slavery was "bottomed" on the direct opposite; and so was the Rebellion, from beginning to end. Therefore we must encounter this denial. We do not extinguish Slavery, we do not trample out the Rebellion, until the vital truth declared by our fathers is established, and Nature in her law is obeyed. To complete the good work, this is necessary. Liberty is won: Equality must be won also. In England there is Liberty without Equality; in France, Equality without Liberty. The two together must be ours. This final victory will be the greatest of the war; it will be the consummation of all other victories. Here must we plant the national standard. To this championship I summon you. Go forth, victors in so many fields, and gather now the highest palm of all. The victory of ideas is grander far than any victory of blood. What battle ever did so much for humanity as the Sermon on Mars Hill? What battle ever did so much as the Declaration of Independence? But Sermon and Declaration are one, and it is your glorious part to assure the National Unity on this adamantine base.

All hail to the Republic, redeemed and regenerated, One and Indivisible! Nullification and Secession are already, like the extinct monsters of a former geological period, to be seen only in the museum of History. With their extinction must disappear the captious, litigious, and disturbing spirit engendered by State pretensions. The whole face of the country will be transformed. There will be concord for discord, smiles for frowns. There will be a new consciousness of national

[1] Address at the Consecration of the National Cemetery at Gettysburg, November 19, 1863: McPherson's Political History of the United States during the Rebellion, p. 606.

life, with a corresponding glow. The soul will dilate with the assured unity of the Republic, and all will feel the glory of its citizenship. Since that of Rome, nothing so commanding. Local jealousies and geographical distinctions will be lost in the attractions of a common country. Then, indeed, there will be no North, no South, no East, no West; but there will be One Nation. No single point of the compass, but the whole horizon, will receive our regard. Not the Southern Cross flaming with beauty, not even the North Star, long time guide of the mariner and refuge to the flying bondman, but the whole star-spread firmament, will be our worship and delight.

As the Nation stands confessed in undivided sovereignty, the States will not cease their appropriate functions. Interlocked, interlaced, and harmonized, they will be congenial parts of the mighty whole, with Liberty and Equality the recognized birthright of all, and no local pretension to interfere against the universal law. There will be a sphere alike for the States and Nation. Local self-government, which is the pride of our institutions, will be reconciled with the national supremacy in maintenance of human rights, and the two together will constitute the elemental principles of the Republic. The States will exercise a minute jurisdiction required for the convenience of all; the Nation will exercise that other paramount jurisdiction required for the protection of all. The reconciliation — God bless the word! — thus begun will embrace the people, who, forgetting past differences, will feel more than ever that they are One, and it will invigorate the still growing Republic, whose original root was little more than an acorn, so that it will find new strength to resist the shock of

tempest or time, while it overarches the continent with its generous shade. Such, at least, is the aspiration in which all may unite.

> "Firm like the oak may our blest nation rise,
> No less distinguished for its strength than size;
> The unequal branches emulous unite
> To shield and grace the trunk's majestic height;
> Through long succeeding years and centuries live,
> No vigor losing from the aid they give!"[1]

[1] From a toast by Charles P. Sumner at the State Celebration of the Fiftieth Anniversary of American Independence, in the Doric Hall of the State House in Boston, July 4, 1826.

CONSTANT DISTRUST OF THE PRESIDENT.

REMARKS IN THE SENATE, ON THE FINAL ADJOURNMENT, NOVEMBER 26, 1867.

THURSDAY, November 21st, Congress reassembled, pursuant to the resolution adopted July 20th. According to existing law, the regular session would commence on the first Monday of December.

November 26th, Mr. Grimes, of Iowa, moved the adjournment of the two Houses on Monday, December 2d, at half past eleven o'clock, A. M. Mr. Sumner suggested "twelve o'clock," remarking, —

I QUESTION whether we should leave even the break of half an hour between the two sessions. The point is just this: Will you leave to the President one half-hour within which he may take advantage of the absence of Congress, and issue commissions which would perhaps run — I do not decide the point now, but which, I say, might run to the last day of the next session? — that may be midsummer or autumn. I take it that an appointment during that interim of half an hour might possibly be valid to the last day of the next session of Congress.

MR. EDMUNDS [of Vermont]. But the law takes no notice of parts of a day.

MR. SUMNER. That is a technicality. Why open the question?

Mr. Grimes, following the suggestion, altered his motion to "twelve o'clock." A debate ensued, in which Mr. Sherman, of Ohio, Mr.

Fessenden, of Maine, and Mr. Trumbull, of Illinois, took part. Mr. Sumner followed.

I HOPE that what we do will be for the welfare of the country, and with no reference to mere rumors or reports. There I agree with my friend; but then I do not agree with him, when he says, Give the President another chance. We have been giving him chances, and we cannot act now without taking into consideration his character and position, which have become matters of history. I would speak with proper delicacy, with proper reserve, but I must speak under the responsibility of a Senator. A large portion of our country believe the President a wicked man, of evil thoughts and unpatriotic purposes, in spirit and conduct the successor of Jefferson Davis, through whom the Rebellion is revived. Such are the sentiments of a large portion of our people.

MR. DIXON [of Connecticut]. I desire to ask the Senator if that is the opinion of a majority of the American people, in his judgment.

MR. SUMNER. It is unquestionably the opinion of a large portion of the people of the United States; whether a majority or not the future may disclose. I will not anticipate any such judgment. I speak now with reference to what is before us. The question is, whether we shall give him another opportunity. I say, No. And here I act on no floating rumor, to which the Senator from Illinois refers; I act with reference to the character of the chief magistrate, displayed in his public conduct. It seems to me that it will be something like rashness, if the Senate concede to him another occasion to practise on the country in carrying

out his policy, as we know he has practised in times past. We must stop the way. We should not give him a day; we should not give him five minutes, — I am ready to say that, — not five minutes, for the chance of illegitimate power. I will not allow him to exercise it, and then take my chance hereafter of applying the corrective.

And that brings me to the exact point as to whether the present session should expire precisely when the coming session begins. I see no reason why it should not. I see no reason why we should interpose the buffer even of five minutes. Let one session come close upon the other, and then we shall exclude every possibility of evil consequences. In France, during the old monarchy, when the king died, the moment the breath was out of his body the reign of his successor began, so that the cry, "The king is dead," was followed instantly by another cry, "Long live the king!" Now I know not why, when this session expires, we may not at the same time announce its expiration and announce a new session.

The resolution was agreed to, and Congress adjourned accordingly.

THE FOURTEENTH AMENDMENT: WITHDRAWAL OF ASSENT BY A STATE.

REMARKS IN THE SENATE, ON THE RESOLUTIONS OF THE LEGISLATURE OF OHIO RESCINDING ITS FORMER RESOLUTION IN RATIFICATION OF THE FOURTEENTH AMENDMENT, JANUARY 31, 1868.

THE resolutions from the Legislature of Ohio are so important in character, and so wholly without precedent, I believe, in our history, that I think they justify remark even by a Senator who has not the honor of any special association with that State.

It seems to me very clear that the authors of these resolutions have accomplished nothing except to exhibit their own blind prejudices. By the Constitution of the United States, a State may give its assent to a Constitutional Amendment. There is no provision for any withdrawal of such assent, when once given. The assent of the State, once given, is final. A State, I do not hesitate to say, can no more withdraw such assent than it can withdraw from the Union; and on the latter proposition I believe there is now a universal accord.

But, happily, Sir, this extraordinary effort of an accidental Legislature is absolutely impotent. The Amendment in question is already a part of the Constitution of the United States, and in full vigor, even without the assent of Ohio. By a report from the Secretary of

State it appears that there is official evidence of the assent of the Legislatures of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Illinois, West Virginia, Kansas, Nevada, Missouri, Indiana, Minnesota, Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, and Nebraska, — being twenty in all, without Ohio. To these now we may add Iowa, which has given its assent very recently, and also Maine, which has notoriously given its assent, although I understand it has not been officially communicated to the Department of State, — making, therefore, twenty-two States, even without Ohio. Twenty-two States are more than three fourths of the Loyal States, or, in other words, of those States that at this moment have Legislatures. The full requirement of the Constitution is therefore met.

This Amendment was originally proposed by a vote of two thirds of Congress, composed of the representatives of the Loyal States. It has now been ratified by the Legislatures of three fourths of the Loyal States, being the same States which originally proposed it through their representatives in Congress. The States that are competent to propose a Constitutional Amendment are competent to adopt it. Both things have been done. The required majority in Congress have proposed it; the required majority of States have adopted it. Therefore, I say, this resolution of the Legislature of Ohio is *brutum fulmen*, — impotent as words without force. It can have no practical effect, except to disclose the character of its authors. As such it may be dismissed to the limbo of things lost on earth.

Mr. Johnson, of Maryland, followed with some remarks, to which Mr. Sumner replied: —

MR. PRESIDENT, — I wish to remind the Senator from Maryland of the exact words of the Constitution, which were not, it seems to me, in his mind when he spoke. An Amendment, when proposed, "shall be valid to all intents and purposes as part of this Constitution, when ratified by the Legislatures of three fourths of the several States." It does not say, "when ratified by three fourths of the several States," but "by the 'Legislatures' of three fourths of the several States." Now, if there are States without Legislatures, they can have no voice in the ratification. Apply this practically. Three fourths of the actual Legislatures of this Union have ratified the proposed Amendment, and I insist, on the text of the Constitution, and also on the reason of the case, that such ratification is complete. But I am unwilling that this argument should stand merely on my words. I introduce here the authority of the best living text-writer on the jurisprudence of our country, who has treated this very point in a manner which leaves no opportunity for reply. I refer to the book of Mr. Bishop on the Criminal Law, who, in one of his notes,[1] considers whether the Amendment of the Constitution abolishing Slavery had been at the time he wrote adopted in a constitutional manner. Of course the very question which we are now discussing with reference to the Fourteenth Amendment arises also on the Amendment prohibiting Slavery. They are both in the same predicament. If the Fourteenth Amendment is not now a part of the Constitution of the United States, then the Amendment prohibiting Slavery is not a part of the Constitution of the United States. They both stand on the same bottom; they were both proposed by Congress

[1] Note to § 776, Vol. I. pp. 433, 434, 3d edit.

in the same way, — that is, by a vote of two thirds of the representatives of the Loyal States; and they have both been ratified by the votes of three fourths of the States having Legislatures. I send to the Chair the work of Mr. Bishop, and I ask the Secretary to be good enough to read what I have marked.

The Secretary read the note above cited.

LOYALTY IN THE SENATE: ADMISSION OF A SENATOR.

REMARKS IN THE SENATE, ON THE RESOLUTION TO ADMIT PHILIP F. THOMAS AS SENATOR FROM MARYLAND, FEBRUARY 13, 1868.

February 13th, the question of the admission of Hon. Philip F. Thomas, Senator-elect from Maryland, charged with disloyalty, coming up for consideration, on a resolution of Hon. Reverdy Johnson, of that State, that said Thomas "be admitted to his seat on his taking the oaths prescribed by the Constitution and laws of the United States," Mr. Sumner moved the following substitute: —

"That Philip F. Thomas, Senator-elect from Maryland, cannot be admitted to take the oaths of office required by the Constitution and laws, inasmuch as he allowed his minor son to leave the paternal house to serve as a Rebel soldier, and gave him at the time one hundred dollars in money, all of which was 'aid,' 'countenance,' or 'encouragement' to the Rebellion, which he was forbidden to give; and further, inasmuch as in forbearing to disclose and make known the treason of his son to the President, or other proper authorities, according to the requirement of the statute in such cases, he was guilty of misprision of treason as defined by existing law."

Mr. Sumner said: —

A GREAT debate on the question how loyalty shall be secured in the Rebel States is for the time silenced in order to consider how loyalty shall be secured in this Chamber. Everywhere in the Rebel States disloyal persons are struggling for power; and now at the door of the Senate we witness a similar struggle. If disloyalty cannot be shut out of this Chamber, how can we hope to overcome it elsewhere?

More than once at other times I have discussed the question of loyalty in the Senate. But this was anterior to the adoption of the Fourteenth Constitutional Amendment. The case is plainer now than then, inasmuch as there is now an explicit text requiring loyalty as a "qualification." Formerly we were left to something in the nature of inference; now the requirement is plain as language can make it.

By the new Amendment it is provided that "no person shall be a Senator or Representative in Congress, ... who, having previously taken an oath, as a member of Congress, or as an officer of the United States, ... to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

These words are precisely applicable to the present case. They lay down a rule from which there is no appeal; and this rule is not merely in the statutes, but in the Constitution. It is the plain declaration that loyalty is a requirement in a Senator and Representative. If we do not apply it to ourselves now, it is difficult to see with what consistency we can apply it to others. Your course here will affect the meaning of this Constitutional Amendment, if not its validity for the future.

I do not stop to argue the question if that Amendment is now a part of the Constitution; for I would not unnecessarily occupy your time, nor direct attention from the case which you are to decide. For the present I content myself with two remarks: first, the Amendment has already been adopted by three fourths of the States that took part in proposing it, and this is

enough, for the spirit of the Constitution is thus satisfied; and, secondly, it has already been adopted by "the *Legislatures* of three fourths of the several States" which have Legislatures, thus complying with the letter of the Constitution. Therefore, by the spirit of the Constitution, and also by its letter, this Amendment is now a part of the Constitution, binding on all of us. As such I invoke its application to this case. In face of this positive, peremptory requirement, it is impossible to see how loyalty can be other than a "qualification." In denying it, you practically set aside this Amendment.

But, even without this Amendment, I cannot doubt that the original text is sufficiently clear and explicit. It is nowhere said in the Constitution that certain specified requirements, and none others, shall be "qualifications" of Senators. This word "qualifications," which plays such a part in this case, occurs in another connection, where it is provided that "each House shall be the judge of the elections, returns, and *qualifications* of its own members." What these "qualifications" may be is to be found elsewhere. Searching the Constitution from beginning to end, we find three "qualifications," which come under the head of *form*, being (1.) age, (2.) citizenship, and (3.) inhabitancy in the State. But behind and above these is another "qualification," which is of *substance*, in contradiction to *form* only. So supreme is this, that it is placed under the safeguard of an oath. This is loyalty. It is easy to see how infinitely more important is this than either of the others, — than age, than citizenship, or than inhabitancy in the State. A Senator failing in either of these would be incompetent by the letter of the Constitution; but

the Republic might not suffer from his presence. On the other hand, a Senator failing in loyalty is a public enemy, whose presence in this council-chamber would be a certain peril to the Republic.

It is vain to say that loyalty is not declared to be a "qualification." I deny it. Loyalty is made a "qualification" in the Amendment to the Constitution; and then again in the original text, when, in the most solemn way possible, it is distinguished and guarded by an oath. Men are familiarly said to "qualify," when they take the oath of office; and thus the language of common life furnishes an authentic interpretation of the Constitution.

But no man can be allowed to take the oath as Senator, when, on the evidence before the Senate, he is not competent. If it appear that he is not of sufficient age, or of the required citizenship or inhabitancy, he cannot be allowed to go to that desk. Especially if it appear that he fails in the all-important "qualification" of loyalty, he cannot be allowed to go to that desk. A false oath, taken with our knowledge, would compromise the Senate. We who consent will become parties to the falsehood; we shall be parties in the offence. It is futile to say that the oath is one of purgation only, and that it is for him who takes it to determine on his conscience if he can take it. The Senate cannot forget the evidence; nor can its responsibility in the case be swallowed up in any process of individual purgation. On the evidence we must judge, and act accordingly. The "open sesame" of this Chamber must be something more than the oath of a suspected applicant.

According to Lord Coke, "an infidel cannot be sworn" as a witness. This was an early rule, which has since

been softened in our courts. But, under the Constitution of the United States and existing statutes, a *political infidel* cannot be sworn as a Senator. Whatever may be his inclination or motive, he must not be allowed to approach your desk. The country has a right to expect that all who enter here shall have a sure and well-founded loyalty, above all question or suspicion. And such, I insist, is the rule of the Constitution and of Congress.

As if to place the question beyond all doubt, Congress by positive enactment requires that every Senator, before admission to his seat, shall swear that he has "voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility" to the United States.[1] Here is little more than an interpretation of the Constitution. The conclusion is plain. No person who has voluntarily given even "countenance" or "encouragement" to another engaged in the Rebellion can be allowed to take that oath.

After this statement of the rule, the question arises, if Philip F. Thomas can be permitted to take the oath at your desk, or, in other words, to "qualify" as a Senator of the United States. Is he competent? This is a question of evidence.

The ample discussion of the facts in this case, and their singular plainness, supersede the necessity of all details. The atmosphere about Mr. Thomas and his acts are harmonious. From the beginning we find him enveloped in coldness and indifference while his country was in peril. Observing him more closely, we are shocked by two acts of positive disloyalty, one of

[1] Act to prescribe an Oath of Office, July 2, 1862: Statutes at Large, Vol. XII. p. 502.

which is the natural prelude of the other. The first muttering of the Rebellion found him a member of the Cabinet of Mr. Buchanan; but when this uncertain President proposed the succor of our troops at Charleston, already menaced with war, Mr. Thomas withdrew from the patriotic service. He resigned his seat, following the lead of Cobb, Thompson, and Floyd. A man is known by the company he keeps. His company at this time were traitors, and the act they united in doing was essentially disloyal. As the Rebellion assumed the front of war, they all abandoned their posts: some to join the Rebellion and mingle with its armies; Mr. Thomas, more prudently, to watch the course of events in Maryland, ready to lift his arm also, if his State pronounced the word. This concerted desertion was in itself a conspiracy against the Government; and in the case of Mr. Thomas, who was Secretary of the Treasury, it was a blow at the national credit, which it was his special duty to guard. It was an act of disloyalty to be blasted by indignant history, even if your judgment fails now. And this was the first stage in this record.

Meanwhile the war rages. Armies are marshalled; battles ensue; Washington itself is beleaguered; the Republic trembles with peril. But Mr. Thomas continues in the seclusion of his home, enveloped in the same disloyal atmosphere, and refusing always the oath of allegiance. At last, in 1863, an only son arrives at the age of eighteen. Though still a minor, he is already of the military age. Naturally filled with the sentiments of his father's fireside, he seeks to maintain them by military service. He is like his father, but with the ardor of youth instead of the caution of years. He

avows his purpose to enlist in the Rebel army, thus to levy war against his country, and adhere to its enemies. All this was treason, — plain, palpable, unquestionable, downright treason. Instead of detaining his son, — instead of keeping him back, — instead of interposing a paternal veto, — instead of laying hands gently upon him, — instead of denouncing him to the magistrate, — all of which the father might have done, — he deliberately lets him go, and then, to cap the climax of criminal complicity, furnishes the means for his journey and his equipment. He gives one hundred dollars. The father is not rich, and yet he gives this considerable sum. Few soldiers started with such ample allowance. Thus it stands: the father, who has already deserted his post in the Cabinet, and has refused to take the oath of allegiance to his country, contributes a soldier to the Rebellion, and that soldier is his only son; to complete and assure the great contribution, he contributes a sum of money also. If all this accumulated disloyalty, beginning in a total renunciation of every patriotic duty, and finally consummated by an act of flagrant, unblushing enormity, is not "aid and comfort" or "countenance" or "encouragement" to the Rebellion, it is difficult to say what can be. There must be new dictionaries for these familiar words, and they must receive a definition down to this day unknown. They must be treated as thread or gossamer, when they should be links of iron.

On an occasion like the present, where the moral guilt is so patent, I hesitate to employ technical language. The simplest phrase is the best. But the law supplies language of its own. Regarding the act of Mr. Thomas in the mildest light, it was "misprision of trea-

son," according to every definition of that crime which can be found in the books. Lord Hale, whose authority, in stating the rules of Criminal Law, is of the highest character, says, under this head: "Every man is bound to use all possible lawful means to prevent a felony, as well as to take the felon; and if he doth not, he is liable to a fine and imprisonment." [1] Lord Coke, another eminent authority, says: "If any be present when a man is slain, and omit to apprehend the slayer, it is a misprision." [2] The same rule is, of course, applicable to treason. Mr. Bishop, who in his remarkable work on the Criminal Law has compressed the result of all the authorities, says: "Misprision of felony is a criminal neglect, either to prevent a felony from being committed by another, or to bring to justice a person known to be guilty of felony. Misprision of treason is the same of treason." [3] Then again he says, citing Hawkins, Blackstone, East, and Russell, all familiar names in our courts, each an oracle: —

"The doctrine of misprision, as now understood, may be stated as follows: To make a man liable for a crime committed through the physical volition of another, his own will must in some degree concur in or contribute to the crime. *But when it is treason or felony, and he stands by while it is done, without using the means in his power to prevent it, though his will concurs not in it, — or when he knows of its having been in his absence committed, but neither makes disclosure of it to the authorities nor does anything to bring the offender to punishment,* — the law holds him guilty of a breach of the duty due from every man to the community wherein he dwells and the government which protects him." [4]

[1] Pleas of the Crown, Vol. I. p. 484.
[2] 3 Institutes, p. 139.
[3] Criminal Law, Vol. I. § 652.
[4] Ibid., § 655.

I adduce these authorities in order to show, that, by the Common Law, as illustrated by some of its best names, Mr. Thomas is beyond all question an offender. Clearly he did not use "the means in his power" to prevent the treason of his son, nor did he "make disclosure of it to the authorities," according to the received rule of law.

But the statutes of the United States leave us no room for doubt or indulgence. According to the precise text, the present case is anticipated and provided for. The Statute of Crimes, adopted in 1790, at the beginning of the National Government, after declaring the punishment of treason, proceeds to declare the punishment of "misprision of treason," as follows: —

"That, if *any person or persons, having knowledge of the commission of any of the treasons aforesaid, shall conceal and not as soon as may be disclose and make known the same* to the President of the United States or some one of the Judges thereof, or to the President or Governor of a particular State or some one of the Judges or Justices thereof, *such person or persons, on conviction, shall be adjudged guilty of misprision of treason*, and shall be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars."[1]

Apply these plain words to the present case. Nobody can doubt that Mr. Thomas had "knowledge" of the treason of his son, and, having this knowledge, failed to "disclose and make known the same" to the President of the United States or the other proper authorities. Abraham Lincoln was at the time President. There is no pretence that the father communicated the crime of the son to this patriot magistrate, or to any

[1] Statutes at Large, Vol. I. p. 112.

other loyal officer by whom he could have been arrested. Therefore, beyond all question, on the facts of the case, the father is guilty under the statute, and liable to seven years of imprisonment and a fine of one thousand dollars. And now, instead of seven years of imprisonment and a fine of one thousand dollars, it is proposed to give him six years of trust and honor as a Senator of the United States, with an annual allowance of five thousand dollars.

According to the old law, the indictment against Mr. Thomas would allege, that, "not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil," he perpetrated his crime. And now, with this crime unatoned for, he comes here to ask your support and countenance. We are to forget all that he did, "moved and seduced" by evil instigation, and welcome him to this Chamber, instead of handing him over to judgment.

It is treating this case with a levity which it is hard to pardon, when Senators argue that the father was not under obligations to exercise all the paternal power in restraint of his son, or at least in denouncing him to the proper authorities. What is patriotism, what is the sacred comprehensive charity of country, if a father can be blameless after such a license to his son? The country was another mother to this son, and he went away to strike this mother on the bosom. There is a case in antiquity which illustrates the solemn duty of the father at least to detain the son. I quote from Sallust. This remarkable writer, in his history of the Catilinarian conspiracy, tells us that there were many not enlisted in the conspiracy who went out to join Catiline; that among these was Aulus Fulvius, the son of a

Senator; and the historian adds, without comment, that the father, when his son was brought back, ordered him to be slain: "*Fuere tamen extra conjurationem complures, qui ad Catilinam profecti sunt: in his A. Fulvius, Senatoris filius; quem retractum ex itinere parens necari jussit.*"[1] Humanity rejects the barbarous exercise of the paternal power according to the Roman Law; but patriotism may find even in this example a lesson of paternal duty. The American father should not have slain his son, but he should have kept him from joining the enemies of his country. This requirement of duty was none the less strong because not enforced by death. I utter not only the rule of patriotism, but the rule of law, when I say that it was positive and peremptory. I will not admit that an American citizen can be blameless who dismisses a son from the paternal roof with money in his purse, to make war upon his country. All that the son did afterward, all that the son sought to do, became the act of the father who sent him forth on his parricidal errand. The father's treason was continued and protracted in the treason of the son.

In making this contribution to the Rebellion, the act of the father was enhanced by his eminent position. He had held a seat in the Cabinet, binding him more than any common citizen to the most watchful allegiance, and giving to what he did peculiar importance. A soldier contributed to the Rebellion by such a person was a startling event. It was aid and comfort, countenance and encouragement, of far-reaching significance. It was a hostile act, directly injurious to his country, and of evil example, the influence of which no man can measure. How many others were weakened

[1] Catilina, Cap. XXXIX.

in loyalty by this parricidal act who can tell? When the citizen who has enjoyed public trust and been a "pillar of State" gives way, others about him must fall likewise. So great a parricide must cause other parricides.

And now this father, who gave a son to the Rebellion, comes into this sanctuary of the Constitution, where loyalty is the first condition of admission, and asks for a seat. *Immo in Senatum venit.* Is there not hardihood in the application? Of course, he cannot be admitted without your act having an influence proportioned to the importance of the position. It will be felt everywhere throughout the country. Admit him, and you will unloose the bonds of loyalty and give a new license to the Rebellion in its protracted struggle. On the contrary, if you send him away, you will furnish a warning to the disloyal, and teach a lesson of patriotism which will thrill the hearts of good citizens now anxiously watching for peace and reconciliation through the triumph of loyalty.

I speak this positively, because on this case I see no doubt. The facts are indisputable, and over all towers one supreme act of parricide, for which there can be no excuse or apology. A soldier was contributed to the enemies of his country. There is no question of motive. The parricidal act was complete, and it explains itself. There is no doubt that it was done. In the presence of such an act, so absolutely criminal, there can be no room for inquiry as to the motive. All this I put aside and look only at the transcendent fact, in which all pretence of innocence is so entirely lost and absorbed that it cannot be seen. As well seek to find a motive, if a son struck at the bosom of his mother.

The law supplies the motive, when it says, in its ancient phrase, "moved and seduced by the instigation of the Devil."

Some there are who doubt the motive of the father, and claim for him now the benefit of that doubt. Even if the motive of this criminal act were in question, as I insist that it cannot be, then do I say, that, in a case like this, when disloyalty is to be shut out of this Chamber, I give the benefit of doubt to my country.

There is another voice which sometimes reaches me. We are told, that, if the applicant be disloyal, then we may expel him. For myself, I prefer to take no such risk. Viewing the case as I do, I have no right to take any such risk. Disloyalty must be met at the door, and not allowed to enter in. The old verses, more than once repeated in our public discussions, are applicable now, — never more so: —

> "I hear a lion in the lobby roar:
> Say, Mr. Speaker, shall we shut the door,
> And keep him there? or shall we let him in,
> To try if we can turn him out again?" [1]

February 19th, after a debate of several days, Mr. Thomas was declared "not entitled to take the oath of office, or to hold a seat, as a Senator of the United States," — Yeas 27, Nays 20.

[1] Bramston, The Art of Politics, 162-165. See, *ante*, Vol. VI. p. 350; Vol. XI. p. 6.

INTERNATIONAL COPYRIGHT.

LETTER TO A COMMITTEE IN NEW YORK, ON THIS SUBJECT, FEBRUARY 17, 1868.

FROM time to time International Copyright has occupied attention, and Mr. Sumner has often in correspondence expressed himself with regard to it. The following letter, in answer to an inquiry, was published by a New York committee of the following gentlemen: George P. Putnam, S. Irenæus Prime, Henry Ivison, James Parton, Egbert Hasard.

SENATE CHAMBER, February 17, 1868.

MY DEAR SIR, — Pardon my delay. There are two ways of dealing with the question of International Copyright, — one by the treaty power, and the other by reciprocal legislation.

I have always thought that the former was the easier, but at the present moment the House of Representatives is not disposed to concede much to the treaty power.

Mr. Everett, while Secretary of State, negotiated a treaty on this subject with Great Britain, which was submitted to the Senate, reported by the Committee on Foreign Relations, considered in the Senate, and finally left on the table, without any definitive vote.

I shall send you a copy of this treaty, which, I believe, has never seen the light.

I have always been in favor of an International Copy-

right, as justice to authors and a new stage in the unity of nations. Perhaps the condition of public affairs at this time, the preoccupation of the public mind, the imminence of the Presidential election, and also the alienation from England, may present temporary obstacles. But I am sanguine that at last the victory will be won. If authors should have a copyright anywhere, they should have it everywhere within the limits of civilization.

Accept my best wishes, and believe me, dear Sir,

Faithfully yours,

CHARLES SUMNER.

JAMES PARTON, ESQ., Secretary of the Committee.

THE IMPEACHMENT OF THE PRESIDENT.

THE RIGHT OF THE PRESIDENT OF THE SENATE PRO TEM. TO VOTE.

REMARKS IN THE SENATE, ON THE QUESTION OF THE COMPETENCY OF MR. WADE, SENATOR FROM OHIO, THEN PRESIDENT OF THE SENATE PRO TEM., TO VOTE ON THE IMPEACHMENT OF PRESIDENT JOHNSON, MARCH 5, 1868.

MR. PRESIDENT, — I shall not attempt to follow learned Senators in the question whether this is a Senate or a Court. That question, to my mind, is simply one of language, and not of substance. Our powers at this moment are under the Constitution of the United States; nor can we add to them a tittle by calling ourselves a Court or calling ourselves a Senate. There they are in the Constitution. Search its text and you will find them. The Constitution has not given us a name, but it has given us powers; and those we are now to exercise. The Senate has the sole power to try impeachments. No matter for the name, Sir. I hope that I do not use an illustration too familiar, when I remind you that a rose under any other name has all those qualities which make it the first of flowers.

I should not at this time have entered into this discussion, if I had not listened to objections on the other side which seem to me founded, I will not say in error,

for that would be bold when we are discussing a question of so much novelty, but I will say founded in a reading of history which I have not been able to verify. Senator after Senator on the other side, all distinguished by ability and learning, have informed us that the Constitution intended to prevent a person who might become President from presiding at the trial of the President. I would ask learned Senators who have announced this proposition, where they find it in the Constitution. The Constitution says: —

"When the President of the United States is tried, the Chief Justice shall preside."

This is all; and yet on this simple text the superstructure of Senators has been reared.

The Constitution does not proceed to say why the Chief Justice shall preside; not at all; nothing of the kind. Senators supply the reason, and then undertake to apply it to the actual President of the Senate. Where, Sir, do they find the reason? They cannot find the reason which they now assign in any of the contemporary authorities illustrating the Constitution; they cannot find it in the debates of the National Convention reported by Madison, or in any of the debates in the States at that time; nor can they find it in the "Federalist." When does that reason first come on the scene? Others may be more fortunate than I; but I have not been able to find it earlier than 1825, nearly forty years after the formation of the Constitution, in the Commentaries of William Rawle. We all know the character of this work, — one of great respectability, and which most of us in our early days have read and studied. How does he speak of it? As follows: —

"The Vice-President, being the President of the Senate, presides on the trial, except when the President of the United States is tried. As the Vice-President succeeds to the functions and emoluments of the President of the United States, whenever a vacancy happens in the latter office, it would be inconsistent with the implied purity of a judge that a person under a probable bias of such a nature should participate in the trial, and it would follow that he should wholly retire from the court."[1]

Those are the words of a commentator on the Constitution. They next appear eight years later, in the Commentaries of Mr. Justice Story. After citing the provision, "When the President of the United States is tried, the Chief Justice shall preside," the learned commentator proceeds:—

"The reason of this clause has been already adverted to. It was to preclude the Vice-President, who might be supposed to have a natural desire to succeed to the office, from being instrumental in procuring the conviction of the Chief Magistrate."[2]

And he cites in his note "Rawle on the Constitution, ch. 22, p. 216,"[3] being the very passage that I have just read. Here is the first appearance of this reason, which is now made to play so important a part, being treated even as a text of the Constitution itself. At least I have not been able to meet it at an earlier day.

If you repair to the contemporary authorities, including the original debates, you will find no such reason assigned,—nothing like it,—not even any suggestion of it. On the contrary, you will find Mr. Madison, in

[1] View of the Constitution, (Philadelphia, 1825,) Chap. XXI. p. 206.
[2] Commentaries on the Constitution, § 775, Vol. II. p. 247.
[3] Second edition (Philadelphia, 1829).

the Virginia Convention, making a statement which explains in the most satisfactory manner the requirement of the Constitution.[1] No better authority could be cited. Any reason supplied by him anterior to the adoption of the Constitution must be of more weight than any *ex post facto* imagination or invention of learned commentators.

If we trust to the lights of history, the reason for the introduction of this clause in the Constitution was because the framers of the Constitution contemplated the possibility of the suspension of the President from the exercise of his powers, in which event the Vice-President could not be in your chair, Sir. If the President were suspended, the Vice-President would be in his place. The reports will verify what I say. If you refer to the debates of the National Convention, under the date of Friday, September 14, 1787, you will find the following entry, which I read now by way of introduction to what follows at a later date, on the authority of Mr. Madison himself.

"Mr. Rutledge and Mr. Gouverneur Morris moved 'that persons impeached be suspended from their offices until they be tried and acquitted.'

"Mr. Madison. The President is made too dependent already on the Legislature by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate.

"Mr. King concurred in the opposition to the amendment."[2]

[1] See, *post*, p. 93.

[2] Madison Papers, Vol. III. pp. 1572, 1573.

The proposition was rejected by the decisive vote of eight States in the negative to three in the affirmative. We all see, in reading it now, that it was rejected on good grounds. It would obviously be improper to confer upon the other branch of Congress the power, by its own vote, to bring about a suspension of the Chief Magistrate. But it did not follow, because the Convention rejected the proposition that a suspension could take place on a simple vote of the House of Representatives, that therefore the President could not be suspended. When the Senate was declared to have the sole power to try impeachments, it was by necessary implication invested with the power, incident to every court, and known historically to belong to the English court of impeachment, from which ours was borrowed, of suspending the party accused. All this was apparent at the time, if possible, more clearly than now. It was so clear, that it furnishes an all-sufficient reason for the provision that the Chief Justice should preside on the trial of the President, without resorting to the later reason which has been put forward in this debate.

But we are not driven to speculate on this question. While the Constitution was under discussion in the Virginia Convention, George Mason objected to some of the powers conferred upon the President, especially the pardoning power. This was on June 18, 1788, and will be found under that date in the reports of the Virginia Convention. This earnest opponent of the Constitution said that the President might "pardon crimes which were advised by himself," and thus further his own ambitious schemes. This brought forward Mr. Madison, who had sat, as we all know, throughout the

debates of the National Convention, and had recorded its proceedings, and who, of all persons, was the most competent to testify at that time as to the intention of the framers. What said this eminent authority? I give you his words: —

"There is one security in this case to which gentlemen may not have adverted. If the President be connected in any suspicious manner with any person, and there be grounds to believe he will shelter him, the House of Representatives can impeach him; they" —

evidently referring to the Senate, or the Senate in connection with the House —

"can remove him, if found guilty; *they can suspend him, when suspected*, and the power will devolve on the Vice-President."[1]

Mark well these words, — "they can suspend him, when suspected." If only suspected, the President can be suspended. What next? "And his power will devolve on the Vice-President." In which event, of course, the Vice-President would be occupied elsewhere than in this Chamber.

Those were the words of James Madison, spoken in debate in the Virginia Convention. Taken in connection with the earlier passage in the National Convention, they seem to leave little doubt with regard to the intention of the framers of the Constitution. They were unwilling to give to the other House alone the power of suspension; but they saw, that, when they authorized the Senate to try impeachments, they gave to it the power of suspension, if it should choose to exercise it; and the suspension of the President necessarily in-

[1] Elliot's Debates, (2d edit.,) Vol. III. p. 498.

volved the withdrawal of the Vice-President from this Chamber, and the duty of supplying his place.

I submit, then, on the contemporary testimony, that the special reason why the Chief Justice is called to preside, when the President is on trial, is less what learned Senators have assigned than because the Vice-President under certain circumstances would not be able to be present. It was to provide for such a contingency, being nothing less than his necessary absence in the discharge of the high duties of Chief Magistrate, that a substitute was necessary, and he was found in the Chief Justice. All this was reasonable. It would have been unreasonable not to make such a provision.

But this is not all. There is an incident, immediately after the adoption of the Constitution, which is in harmony with this authentic history. The House of Representatives at an early day acted on the interpretation of the Constitution given by Mr. Madison. The first impeachment, as we all know, was of William Blount, a Senator, and in impeaching him the House of Representatives demanded that he should "be sequestered from his seat in the Senate." This was in 1797. The Senate did not comply with this demand; but the demand nevertheless exists in the history of your Government, and it illustrates the interpretation which was given at that time to the powers of the Senate. The language employed, that the person impeached should be "sequestered," is the traditional language of the British Constitution, constantly used, and familiar to our fathers. In employing it, the House of Representatives gave their early testimony that the Senate could suspend from his functions any person

impeached before them; and thus the House of Representatives unite with Madison in supplying a sufficient reason for the provision that on the trial of the President the Chief Justice shall preside.

In abandoning the reason which I have thus traced to contemporary authority, you launch upon an uncertain sea. You may think the reason assigned by the commentators to be satisfactory. It may please your taste; but it cannot be accepted as an authentic statement. If the original propositions were before me, I should listen to any such suggestion with the greatest respect. I do not mean to say now, that, as a general rule, it has not much in its favor; but I insist, that, so far as we are informed, the reason of the commentators was an afterthought, and that there was another reason which sufficiently explains the rule now under consideration.

I respectfully submit, Sir, that you cannot proceed in the interpretation of this text upon the theory adopted by the learned Senators over the way. You must take the text as it is. You cannot go behind it; you cannot extend it. Here it is: "When the President of the United States is tried, the Chief Justice shall preside." That is the whole, Sir. "The Chief Justice shall preside." No reason is assigned. Can you assign a reason? Can you supply a reason? Especially can you supply one which is not sustained by the authentic contemporary history of the Constitution, and particularly when you have authentic contemporary history which supplies another reason? Unless I am much mistaken, this disposes of the objection, proceeding from so many Senators, that the Senator from Ohio cannot take the oath because he may possibly succeed

to the President now impeached at your bar. He may vote or not, as he pleases; and there is no authority in the Constitution, or any of its contemporary expounders, to criticize him.

This is all, Sir, I have to say at this time on this head. There were other remarks made by Senators over the way to which I might reply. There was one that fell from my learned friend, the Senator from Maryland, [Mr. JOHNSON,] in which he alluded to myself. He represented me as having cited many authorities from the House of Lords, tending to show, in the case of Mr. Stockton, that this person at the time was not entitled to vote on the question of his seat. The Senator does not remember that debate, I think, as well as I do. The point which I tried to present to the Senate, and which, I believe, was affirmed by a vote of the body, was simply this: that a man cannot sit as a judge in his own case. That was all, — at least so far as I recollect; and I submitted that Mr. Stockton at that time was a judge undertaking to sit in his own case.[1] Pray, Sir, what is the pertinency of this citation? Is it applicable at all to the Senator from Ohio? Is his case under consideration? Is he impeached at the bar of the Senate? Is he in any way called in question? Is he to answer for himself? Not at all. How, then, does the principle of law, that no man shall sit as a judge in his own case, apply to him? How does the action of the Senate in the case of Mr. Stockton apply to him? Not at all. The two cases are as wide as the poles asunder. One has nothing to do with the other.

[1] See, *ante*, Vol. XIV. pp. 15, seqq.

Something has been said of the "interest" of the Senator from Ohio on the present occasion. "Interest"! This is the word used. We are reminded that in a certain event the Senator may become President, and that on this account he is under peculiar temptations, which may swerve him from justice. The Senator from Maryland went so far as to remind us of the large salary to which he might succeed, — not less than twenty-five thousand dollars a year, — and thus added a pecuniary temptation to the other disturbing forces. Is not all this very technical? Does it not forget the character of this great proceeding? Sir, we are a Senate, and not a Court of *Nisi Prius*. This is not a case of assault and battery, but a trial involving the destinies of this Republic. I doubt if the question of "interest" is properly raised. I speak with all respect for others, but I submit that it is inapplicable. It does not belong here. Every Senator has his vote, to be given on his conscience. If there be any "interest" to sway him, it must be that of justice, and the safety of the country. Against these all else is nothing. The Senator from Ohio, whose vote is now in question, can see nothing but those transcendent interests by the side of which office, power, and money are of small account. Put in one scale these interests, so dear to the heart of the patriot, and in the other all the personal temptations which have been imagined, and I cannot doubt, that, if the Senator from Ohio holds these scales, the latter will kick the beam.

THE CHIEF JUSTICE, PRESIDING IN THE SENATE, CANNOT RULE OR VOTE.

OPINION IN THE CASE OF THE IMPEACHMENT OF ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES, MARCH 31, 1868.

IN the course of this trial there was an important claim of power by the Chief Justice, as presiding officer of the Senate, on which at the time Mr. Sumner expressed his opinion to the Senate, when it withdrew for consultation. As this claim was calculated in certain contingencies to affect the course of proceedings, possibly the final judgment, and as it might hereafter be drawn into a precedent, Mr. Sumner was unwilling to lose this opportunity of recording his reasons against it.

IN determining the relations of the Chief Justice to the trial of the President, we must look, first, to the National Constitution; for it is solely by virtue of the National Constitution that this eminent magistrate is transported from his own natural field to another, where he is for the time an exotic. The Chief Justice in his own court is at home; but it is equally clear, that, when he comes into the Senate, he is a stranger. Though justly received with welcome and honor, he cannot expect membership, or anything beyond the powers derived directly from the National Constitution, by virtue of which he temporarily occupies the Chair.

Repairing to our authoritative text, we find the only applicable words: —

"The Senate shall have the sole power to try all impeachments. . . . . When the President of the United States is tried, the Chief Justice shall *preside:* and no person shall be convicted without the concurrence of two thirds of the members present."

This is all. The Chief Justice shall *preside,* but subject to two limitations specifically declared. First, the trial is to be by the Senate *solely,* and nobody else, — thus carefully excluding the presiding officer from all participation, except so far as is implied in the power to preside; and, secondly, judgment of conviction can be only by a vote of "two thirds of *the members present,*" — thus again excluding the presiding officer, unless it is assumed that he is a member of the Senate.

On the face of this text it is difficult to find ambiguity. Nobody questions that the Chief Justice must preside. Can anybody question that the trial must be by the Senate solely, and nobody else? To change this requirement is to fly in the face of the National Constitution. Can anybody question that the judgment of conviction must be by votes of "members present," and nobody else? Now, since the Chief Justice is not a "member" of the Senate, it is plain that he is positively excluded from vote on the final question. It only remains that he should "preside." And here the question recurs as to the meaning of this familiar term.

The person who presides is simply, according to the language of our Rules, "presiding officer," and this designation is the equivalent or synonym of speaker, and also of prolocutor, each of which signifies somebody who speaks for the house. It is not implied that he votes with the house, much less that he decides for the house, but only that he is the voice of the house, —

its speaker. What the house has to say it says through him; but, except as organ of the house, he is silent, unless also a member, when to his powers as presiding officer he superadds the powers of a member also. From this brief statement it appears at once how limited his functions must be.

Here I might stop; but, since this question has assumed unexpected importance, I am induced to go further. It is easy to show that the language of the National Constitution, if seen in the light of English parliamentary history, must have an interpretation identical with its natural import.

Nothing is clearer than this. If language employed in the National Constitution had already, at the time of its formation, received a definite meaning, it must be interpreted accordingly. Thus, when the Constitution secures "trial by jury," it secures that institution as defined by antecedent English law. So, also, when it declares that the judicial power shall extend to "all cases in law and equity" arising under the National Constitution, it recognizes the distinction between law and equity peculiar to English law. Courts of Common Law and Courts of Equity are all implied in this language; and since there is no further definition of their powers, we must ascertain them in England. Cushing, in determining the rules of proceeding in our American Legislatures, says:—

"Such was the practice of the two Houses of the British Parliament when our ancestors emigrated; . . . . and such has continued to be, and now is, the practice in that body."[1]

This resource has been most persuasively presented

[1] Lex Parliamentaria Americana: Elements of the Law and Practice of Legislative Assemblies in the United States, (2d edit.,) § 302.

by Mr. Wirt, in his remarkable argument on the impeachment of Judge Peck, where he vindicates and expounds the true rule of interpretation.

According to this eminent authority, what he calls "the English archetypes" were the models for the framers of the National Constitution. The courts were fashioned after these "archetypes." They were instituted according to "the English *originals*, to which they were manifestly referred by the Constitution itself."[1] Here again I quote the words of Mr. Wirt.

All this is precisely applicable to that part of the National Constitution under consideration. In essential features it was borrowed from England. There is its original, its model, its archetype. Therefore to England we go.

Not only to England must we go, but also to Parliamentary Law, as recognized in England at the adoption of the National Constitution. The powers of a presiding officer, where not specifically declared, must be found in Parliamentary Law. The very term *preside* is parliamentary. It belongs to the technicalities of this branch of law, as much as *indict* belongs to the technicalities of the Common Law. In determining the signification of this term, it will be of little avail to show some local usage, or, perhaps, some decision of a court. The usage or decision of a Parliament must be shown. Against this all vague speculation or divination of reason is futile. I will not encumber this discussion by superfluous authorities. Insisting that this question must be determined by Parliamentary Law, I content myself with adducing the often cited words of Lord Coke:—

[1] Trial of Judge Peck, Appendix, p. 499.

"And as every court of justice hath laws and customs for its direction, some by the Common Law, some by the Civil and Canon Law, some by peculiar laws and customs, etc., so the High Court of Parliament *suis propriis legibus et consuetudinibus subsistit.* It is *lex et consuetudo Parliamenti*, that all weighty matters in any Parliament, moved concerning the peers of the realm, or commons in Parliament assembled, *ought to be determined and adjudged and discussed by the course of the Parliament*, and not by the Civil Law, nor yet by the common laws of this realm used in more inferior courts."[1]

Here is the true rule. To "the course of the Parliament" we must resort. In "the course of the Parliament" we must find all the powers of a presiding officer, and all that is implied in the authority to preside. "The Chief Justice shall preside." Such is the Constitution. Nothing is specified with regard to his powers; nothing is said. What was intended is left to inference from the language employed, which must be interpreted according to "the course of the Parliament," precisely as what was intended by trial by jury is ascertained from the Common Law. In the latter case we go to the Common Law; in the former case we go to "the course of the Parliament." You may as well turn away from the Common Law in the one as from "the course of the Parliament" in the other. In determining "the course of the Parliament" we resort to the summary of text-writers, and, better still, to the authentic instances of history.

Something has been said in this discussion with regard to the example of Lord Erskine, who presided at the impeachment of Lord Melville. This was in 1806,

[1] 4 Institutes, pp. 14, 15.

during the short-lived ministry of Fox, when Erskine was Chancellor. It is by misapprehension that this instance is supposed to sustain the present assumption. When seen in its true light, it is found in harmony with the general rule. Erskine had at the time two characters. He was Lord Chancellor, and in this capacity presiding officer of the House of Lords, without the right to rule or vote, or even to speak. Besides being Chancellor, he was also a member of the House of Lords, with all the rights of other members. As we advance in this inquiry, it will be seen that again and again it has been practically decided, that, whatever the powers of a presiding officer who is actually a member, a presiding officer who is not a member cannot rule or vote, or even speak. In this statement I anticipate the argument. I do it at this stage only to put aside the suggestion founded on the instance of Lord Chancellor Erskine.

I begin with the most familiar authority, — I mean the eminent writer and judge, Sir William Blackstone. In his Commentaries, where is found, in elegant form, the complete body of English law, you have this whole matter stated in a few suggestive words: —

"The Speaker of the House of Lords, *if a Lord of Parliament*, may give his opinion or argue any question in the House." [1]

If not a Lord of Parliament, he could not give his opinion or argue any question. This is in accordance with all the authorities and unbroken usage; but it has peculiar value at this moment, because it is the text of Blackstone. This work was the guide-book of our

[1] Commentaries, Vol. I. p. 181.

fathers. It first appeared in 1765 – 69, the very period when the controversy with the mother country was fervid; and it is an unquestionable fact of history that it was read in the Colonies with peculiar interest. Burke, in one of his masterly orations, portraying the character of our fathers, says: "I hear that they have sold nearly as many of Blackstone's Commentaries in America as in England." [1] Nothing is clearer than that they knew it well.

The framers of the National Constitution had it before them constantly. It was their most familiar work. It was to them as Bowditch's Navigator is to the mariner in our day. They looked to it for guidance on the sea they were traversing. When they undertook to provide that the Chief Justice, who was not a member of the Senate, should preside at the impeachment of the President, they knew well that he could have no power to "give his opinion or argue any question in the House," for Blackstone had instructed them explicitly on this head. They knew that he was simply a presiding officer, according to the immemorial usage of the upper House in England, with such powers as belong to a presiding officer who is not a member of the House, and none other.

The powers of the presiding officer of the House of Lords are illustrated by authority and precedents, all in harmony with the statement of Blackstone. Ordinarily the Keeper of the Great Seal is the presiding officer; but,

[1] Speech on Conciliation with America, March 22, 1775: Works, (Boston, 1866 – 67,) Vol. II. p. 125. Besides the importations into the Colonies from England, where, according to Lowndes, no less than six editions had been published prior to the date of this speech, an edition was printed in Philadelphia in 1771 – 72, with a subscription, as appears by the list accompanying it, of nearly sixteen hundred copies.

unless a member of the body, he can do little more than put the question. Any other person, as a Chief Justice, may be delegated by royal commission. According to the rules of the House, even if a peer, he cannot speak without quitting the woolsack, which is the Chair, and moving "to his own place as a peer."[1] The right of speech belongs to him as a member, but he cannot exercise it without leaving his place as presiding officer. So is he circumscribed.

A late writer on Parliamentary Law, whose work is a satisfactory guide, thus sententiously sums up the law and usage:—

"The position of the Speaker of the House of Lords is somewhat anomalous; for, though he is the president of a deliberative assembly, he is invested with no more authority than any other member; and if not himself a member, his office is limited to the putting of questions and other formal proceedings."[2]

This statement is in obvious harmony with that of Blackstone; so that there is no difference between the writer who is our guide to-day and the learned commentator who was the guide of our fathers.

Mr. May goes still further, and lets us know that it is only as a member of the House that the presiding officer can address it, even on points of order:—

"Upon points of order, the Speaker, if a peer, may address the House; but, as his opinion is liable to be questioned, like that of any other peer, he does not often exercise his right."[3]

[1] Lords' Standing Orders: May's Parliamentary Practice, (5th edit.,) p. 221.

[2] May, Parliamentary Practice, Ibid.

[3] Ibid.

Thus, even if a peer, even if a member of the upper House, the presiding officer cannot rule a point of order, nor address the House upon it, except as any other member; and what he says is open to question, like the utterance of any other member. Such is the conclusion of the most approved English authority.

American writers on Parliamentary Law concur with English. Cushing, who has done so much to illustrate the whole subject, says of the presiding officer of the Lords, that he "is invested with no more authority for the preservation of order than any other member; and if not himself a member, his office is limited to the putting of questions and other formal proceedings; . . . . if he is a peer, he may address the House and participate in the debates as a member." He then says again: "If a peer, he votes with the other members; if not, he does not vote at all." And he adds: "There is no casting vote in the Lords." [1] This statement was made long after the adoption of the National Constitution, and anterior to the present controversy.

There are occasions when the Lords have a presiding officer called a Lord High Steward. This is on the trial of a peer, whether upon impeachment or indictment. Here the same rule is stated by Edmund Burke, in his masterly Report to the House of Commons on the impeachment of Warren Hastings: —

"Every peer present at the trial (and every temporal peer hath a right to be present in every part of the proceeding) voteth upon every question of law and fact, and the question is carried by the major vote, — the High Steward himself voting merely as a peer and member of that court,

[1] Lex Parliamentaria Americana, (2d edit.,) § 288.

in common with the rest of the peers, and in no other right."[1]

In another place, the Report, quoting the Commons' Journal, says:—

"That the Lord High Steward was but as a Speaker, or *Chairman*, for the more orderly proceeding at the trials."[2]

And then again:—

"The appointment of him doth not alter the nature of the court, which still remaineth the Court of the Peers in Parliament."[3]

The name of Burke gives to this illustration additional authority and interest. It is not difficult to see how he would have decided the present question.

In our day there have been instances of the Lord Chancellor as presiding officer without being a peer. Brougham took his seat on the 22d November, 1830, before his patent as a peer had been made out, and during this interval his energies were suppressed in the simple duty of presiding officer and nothing else. The same was the case with that eminent lawyer, Sir Edward Sugden, who sat as presiding officer on the 4th March, 1852, although still a commoner; and it was also the case with Sir Frederick Thesiger, who sat as presiding officer on the 1st March, 1858, although still a commoner. These instances attest the prevalence of the early rule down to our day. Even Brougham, who never shrank from speech or from the exercise of power, was constrained to bow before its exigency. He sat as

[1] Report from the Committee appointed to inspect the Lords' Journals, Appendix, No. I. (Extract from Foster's Crown Law): Burke's Works, (Boston, 1866–67,) Vol. XI. p. 126.

[2] Ibid., p. 129, note.

[3] Ibid., p. 132.

Lord Chancellor, and in that character put the question, but this was all, until he became a member of the House. Lord Campbell expressly records, that, while his name appears in the entry of those present on the 22d November, 1830, as *Henricus Brougham, Cancellarius*, "he had no right to debate and vote till the following day," when the entry of his name and office appears as *Dominus Brougham et Vaux, Cancellarius*.[1]

Passing from these examples of recent history, I return to the rule as known to our fathers at the adoption of the National Constitution. On this head the evidence is complete. It is found in the State Trials of England, in parliamentary history, and in the books of law; but it is nowhere better exhibited than in the Lives of the Chancellors, by Lord Campbell, himself a member of the House of Lords and a Chancellor, familiar with it historically and practically. He has stated the original rule, and in his work, which is as interesting as voluminous, has furnished constantly recurring illustrations of it. In the Introduction to his Lives, where he describes the office of Chancellor, he enunciates the rule:—

"Whether peer or commoner, the Chancellor is not, like the Speaker of the Commons, moderator of the proceedings of the House in which he seems to preside; he is not addressed in debate; he does not name the peer who is to be heard; he is not appealed to as an authority on points of order; and he may cheer the sentiments expressed by his colleagues in the ministry."[2]

Existing rules of the Senate add to these powers; but such is the rule with regard to the presiding officer

[1] Lives of the Chancellors, (4th edit., London, 1856,) Vol. I. p. 15, note.
[2] Ibid., p. 15.

of the House of Lords, even when a peer. He is not appealed to on points of order. If a commoner, his power is still less.

"If he be a commoner, notwithstanding a resolution of the House that he is to be proceeded against for any misconduct as if he were a peer, he has neither vote nor deliberative voice, and he can only put the question, and communicate the resolutions of the House according to the directions he receives."[1]

In the early period of English history the Chancellors were often ecclesiastics, though generally commoners. Fortescue, Wolsey, and More were never peers. This also was the case with Sir Nicholas Bacon, father of Lord Bacon, who held the seals under Queen Elizabeth for twenty years, and was colleague in the cabinet of Burleigh. Lord Campbell remarks on his position as presiding officer of the House of Lords:—

"Not being a peer, he could not take a share in the Lords' debates; but, presiding as Speaker on the woolsack, he exercised a considerable influence on their deliberations."[2]

Then again we are told:—

"Being a commoner, he could neither act as Lord Steward nor sit upon the trial of the Duke of Norfolk, who was the first who suffered for favoring Mary's cause."[3]

Thus early do we meet illustration of this rule, which constantly reappears in the annals of Parliament.

The successor of Sir Nicholas Bacon was Lord Chancellor Bromley; and here we find a record interesting at this moment. After presiding at the trial of Mary,

[1] Lives of the Chancellors, (4th edit.,) Vol. I. pp. 14, 15.
[2] Ibid., Vol. II. p. 229.
[3] Ibid.

Queen of Scots, the Lord Chancellor became ill and took to his bed. Under the circumstances, Sir Edmund Anderson, Chief Justice of the Common Pleas, was authorized by the Queen to act as a substitute for the Chancellor; and thus the Chief Justice became presiding officer of the House of Lords to the close of the session, without being a peer.

Then came Sir Christopher Hatton, the favorite of Queen Elizabeth, and so famous as the dancing Chancellor, who presided in the House of Lords by virtue of his office, but never as peer. The same was the case with his successor, Sir John Puckering. He was followed by the exemplary Ellesmere, who was for many years Chancellor without being a peer, but finished his career by adding to his title as presiding officer the functions of a member. The greatest of all now followed. After much effort and solicitation, Bacon becomes Chancellor with a peerage; but it is recorded in the Lords' Journals, that, when he spoke, he removed from the woolsack "to his seat as a peer," thus attesting that he had no voice as presiding officer. At last, when the corruptions of this remarkable character began to overshadow the land, the Chief Justice of the King's Bench, Sir James Ley, was designated by the King to act as Speaker of the House of Lords. Soon afterward Bacon fell. Meanwhile it is said that the Chief Justice "had very creditably performed the duties of Speaker of the House of Lords."[1] In other words, according to the language of our Constitution, he had presided well.

Then came Williams, Coventry, and Finch, as Lord Keepers. As the last absconded to avoid impeachment

[1] Campbell, Lives of the Chancellors, (4th edit.,) Vol. III. p. 156.

by the House of Commons, Littleton, Chief Justice of the Common Pleas, "was placed on the woolsack as Speaker."[1] At a later time he received the Great Seal as Lord Keeper. This promotion was followed by a peerage, at the prompting of no less a person than the Earl of Strafford, "who thought he might be more useful, if permitted to take part in the proceedings of the House as a peer, than if he could only put the question as Speaker."[2] Clarendon says, that, as a peer, he could have done Strafford "notable service."[3] But the timid peer did not render the expected service.

Then came the period of Civil War, when one Great Seal was with the King and another was with Parliament. Meanwhile the Earl of Manchester was appointed Speaker of the upper House, and as such took his place on the woolsack. As a peer he had all the privileges of a member of the House over which he presided. Charles the Second, during his exile, appointed Hyde, afterward Earl of Clarendon, as Chancellor; but the monarch was for the time without a Court and without a Parliament. On the Restoration, in 1660, the Chancellor at once entered upon all his duties, judicial and parliamentary; and it is recorded, that, "though still a commoner, holding the Great Seal, he took his place on the woolsack as Speaker by prescription."[4] A year later the commoner was raised to the peerage, thus becoming more than presiding officer. During illness from the gout the place of the Chancellor as presiding officer was sometimes supplied by Sir Orlando Bridgeman, Chief Justice of the Common

[1] Campbell, Lives of the Chancellors, (4th edit.,) Vol. III. p. 270.
[2] Ibid., p. 281.
[3] History of the Rebellion, (Oxford, 1826,) Book III., Vol. I. p. 381.
[4] Campbell, Lives of the Chancellors, (4th edit.,) Vol. IV. p. 68.

Pleas, who on these occasions was presiding officer, and nothing more. Lord Campbell says he "frequently sat Speaker in the House of Lords,"[1] — meaning that he presided.

On the disgrace of Lord Clarendon, the disposal of the Great Seal was the occasion of perplexity. The historian informs us, that, "after many doubts and conflicting plans among the King's male and female advisers, it was put into the hands of a grave Common-Law judge,"[2] being none other than the Chief Justice of the Common Pleas, who had already presided in the absence of Lord Clarendon; but he was never raised to the peerage. Then comes another explanation of the precise relation of such an official to the House. Lord Campbell expressly remarks, that, "never being created a peer, his only duty in the House of Lords was to put the question, and to address the two Houses in explanation of the royal will on the assembling of Parliament."[3] Here is the constantly recurring definition of the term *preside*.

For some time afterward there seems to have been little embarrassment. Nottingham, who did so much for Equity, Shaftesbury, who did so little, Guilford, so famous through contemporary biography, and Jeffreys, so justly infamous, — successively heads of the law, — were all peers. But at the Revolution of 1688 there was an interregnum, which again brought into relief the relations between the upper House and its presiding officer. James, on his flight, dropped the Great Seal into the Thames. There was, therefore, no presiding officer for the Lords. To supply this want, the

[1] Lives of the Chancellors, (4th edit.,) Vol. IV. p. 145.
[2] Ibid., p. 139.
[3] Ibid., p. 147.

Lords, at the meeting of the Convention Parliament, chose one of their own number, the Marquis of Halifax, as Speaker, and, in the exercise of the power inherent in them, they continued to reëlect him day by day. During this period he was strictly President *pro tempore*. At last, Sir Robert Atkyns, Chief Baron of the Exchequer, a commoner, took his seat upon the woolsack as Speaker, appointed by the Crown. Here, again, we learn that "serious inconvenience was experienced from the occupier of the woolsack not being a member of the House."[1] At last, in 1693, the Great Seal was handed to Sir John Somers, Lord Keeper; and here is another authentic illustration of the rule. Although official head of the English law, and already exalted for his ability and varied knowledge, this great man, one of the saviours of constitutional liberty in England, was for some time merely presiding officer. The historian records, that, "while he remained a commoner, he presided on the woolsack only as Speaker";[2] that he "had only, as Speaker, to put the question, ... taking no part in debate."[3] This is more worthy of notice because Somers was recognized as a consummate orator. At last, according to the historian, "there was a strong desire that he should take part in the debates, and, to enable him, the King pressed his acceptance of a peerage, which, after some further delay, he did, and he was afterward known as Lord Somers.[4]

In the vicissitudes of public life this great character was dismissed from office, and a successor was found in an inferior person, Sir Nathan Wright, who was created Lord Keeper without a peerage. For the five years of

[1] Campbell, Lives of the Chancellors, (4th edit.,) Vol. V. p. 46.
[2] Ibid., p. 102. [3] Ibid., p. 106. [4] Ibid., pp. 109, 114.

his official life it is recorded that he occupied the woolsack, "merely putting the question, and having no influence over the proceedings."[1] Thus he presided.

Then came the polished Cowper, at first without a peerage, but after a short time created a member of the House. Here again the historian records, that, while he remained a commoner, "he took his place on the woolsack as Speaker of the House of Lords, and without a right to debate or vote."[2] It appears, that, "not being permitted to share in the debates in the House of Lords, he amused himself by taking notes of the speeches on the opposite sides."[3] Afterward, even when a peer, and, as Chancellor, presiding at the impeachment of Sacheverell, Lord Cowper did not interfere further than by saying, "Gentlemen of the House of Commons," or "Gentlemen, you that are counsel for the prisoner may proceed."[4]

Harcourt followed Cowper as Keeper of the Great Seal, but he was not immediately raised to the peerage. It is recorded that during one year he had "only to sit as Speaker,"[5] — that is, only to preside. Afterwards, as peer, he became a member. On the accession of George the First, Harcourt, in turn, gave place to Cowper, who was again made Chancellor. To him succeeded the Earl of Macclesfield, with all the rights of membership.

Lord Macclesfield, being impeached of high crimes and misdemeanors as Chancellor, Sir Peter King, at the time Chief Justice of the Common Pleas, was made presiding officer of the upper House, with only the lim-

[1] Campbell, Lives of the Chancellors, (4th edit.,) Vol. V. p. 207.
[2] Ibid., p. 257. [3] Ibid., p. 259. [4] Ibid., p. 269. [5] Ibid., p. 377.

ited powers belonging to a presiding officer who is not a member of the body. Here the record is complete. Turn to the trial and you will see it all. It was he who gave directions to the managers, and also to the counsel, — who put the question, and afterward pronounced the sentence; but he acted always as presiding officer and nothing else. I do not perceive that he made any rulings during the progress of the trial. He was Chief Justice of the Common Pleas, acting as President *pro tempore*. The report, describing the opening of the proceedings, says that the articles of impeachment, with the answer and replication, were read "by direction of the Lord Chief Justice King, Speaker of the House of Lords."[1] Another definition of the term *preside*.

All this is compendiously described by Lord Campbell: —

"Sir Peter, not being a peer, of course had no deliberative voice, but, during the trial, as the organ of the House of Peers, he regulated the procedure without any special vote, intimating to the managers and to the counsel for the defendant when they were to speak and to adduce their evidence. After the verdict of *Guilty*, he ordered the Black Rod to produce his prisoner at the bar; and the Speaker of the House of Commons having demanded judgment, he, in good taste, abstaining from making any comment, dryly, but solemnly and impressively, pronounced the sentence which the House had agreed upon."[2]

This proceeding was in 1725. At this time, Benjamin Franklin, the printer-boy, was actually in London. It is difficult to imagine that this precocious char-

[1] Howell's State Trials, Vol. XVI. col. 768.
[2] Lives of the Chancellors, (4th edit.,) Vol. VI. p. 94.

acter, whose observation in public affairs was as remarkable as in philosophy, should have passed eighteen months in London at this very period without noting this remarkable trial and the manner in which it was conducted. Thus, early in life, he saw that a Chief Justice might preside at an impeachment without being a member of the House of Lords or exercising any of the powers which belong to membership.

Besides his eminence as Chief Justice, King was the nephew of the great thinker who has exercised such influence on English and American opinion, John Locke. Shortly after presiding at the impeachment as Chief Justice, he became Chancellor with a peerage.

He was followed in his high post by Talbot and Hardwicke, each with a peerage. Jumping the long period of their successful administrations, when the presiding officer was also a member of the upper House, I come to another instance where the position of the presiding officer was peculiarly apparent, — and this, too, when Benjamin Franklin was in London, as agent for Pennsylvania. I refer to Sir Robert Henley, who became Lord Keeper in 1757, without a peerage. The King, George the Second, did not like him, and therefore, while consenting to place him at the head of the law, declined to make him a member of the House over which he was to preside. At last, in 1760, the necessities of the public service constrained his elevation to the peerage, and soon afterward George the Third, who succeeded to the throne without the animosities of his grandfather, created him Chancellor and Earl of Northington.

For nearly three years, Henley, while still a commoner, was presiding officer. During this considerable

period he was without voice or vote. The historian remarks, that, "if there had been any debates, he was precluded from taking part in them." [1] In another place he pictures the defenceless condition of the unhappy magistrate with regard to his own decisions in the court below, when heard on appeal:—

"Lord Keeper Henley, till raised to the peerage, used to complain bitterly of being obliged to put the question for the reversal of his own decrees, without being permitted to say a word in support of them." [2]

Lord Eldon, in his Anecdote Book, furnishes another statement of this case:—

"When Sir Robert Henley was Keeper of the Great Seal, and presided in the House of Lords as Lord Keeper, he could not enter into debate as a Chancellor being a peer does; and therefore, when there was an appeal from his judgments in the Court of Chancery, and the law Lords then in the House moved to reverse his judgments, ... the Lord Keeper could not state the grounds of his opinions given in judgment, and support his decisions." [3]

And thus for nearly three years this commoner presided.

A few weeks after Henley first took his place as presiding officer, Franklin arrived in London for the second time, and continued there, a busy observer, until after the Judge was created a peer. Even if he had been ignorant of parliamentary usage, or had forgotten what passed at the trial of Lord Macclesfield, he could not have failed to note that the House of Lords had for

[1] Campbell, Lives of the Chancellors, (4th edit.,) Vol. VI. p. 316.
[2] Ibid., Vol. I. p. 15, note.
[3] Twiss, Life of Eldon, Vol. I. p. 319.

its presiding officer an eminent judge, who, not being a member, could take no part in its proceedings beyond putting the question.

Afterward, in 1770, there was a different arrangement. Owing to difficulty in finding a proper person as Chancellor, the Great Seal was put in commission, and Lord Mansfield, Chief Justice of England, was persuaded to act as presiding officer. Curiously enough, Franklin was again in England, on his third visit, and remained through the service of Lord Mansfield in this capacity. Thus this illustrious American, afterward a member of the Convention that framed the National Constitution, had at two different times seen the House of Lords with a presiding officer who, not being a member of the body, could only put the question, and then again with another presiding officer who, being a member of the body, could vote and speak, as well as put the question.

But Franklin was not the only member of the National Convention to whom these precedents were known. One or more had been educated at the Temple; others were accomplished lawyers, familiar with the courts of the mother country. I have already mentioned that Blackstone's Commentaries, where the general rule is clearly stated, was as well known in the Colonies as in the mother country. Besides, our fathers were not ignorant of the history of England, which, down to the Declaration of Independence, had been their history. The English law was also theirs. Not a case in its books which did not belong to them as well as to the frequenters of Westminster Hall. The State Trials, involving principles of Constitutional Law, and embodying these very precedents, were all known. At least

four editions had appeared several years before the adoption of the National Constitution. I cannot err in supposing that all these were authoritative guides at the time, and that the National Constitution was fashioned in all the various lights, historical and judicial, which they furnished.

The conclusion is irresistible, that the National Constitution, when providing a presiding officer for the trial of the President of the United States, used the term *preside* in the sense already acquired in Parliamentary Law, and did not intend any different signification; that our fathers knew perfectly well the parliamentary distinction between a presiding officer a member of the House and a presiding officer not a member; that, in constituting the Chief Justice presiding officer for a special temporary purpose, they had in view similar instances in the mother country, when the Lord Keeper, Chief Justice, or other judicial personage, had been appointed to preside over the House of Lords, of which he was not a member, as our Chief Justice is appointed to preside over the Senate, of which he is not a member; that they found in this constantly recurring example an apt precedent for their guidance; that they followed this precedent to all intents and purposes, using received parliamentary language, "the Chief Justice shall preside," and nothing more; that, according to this precedent, they never intended to invest the Chief Justice, President *pro tempore* of the Senate, with any other powers than those of a presiding officer not a member of the body; and that these powers, exemplified in an unbroken series of instances extending over centuries, under different kings and through various administrations, were simply to put the ques-

tion and to direct generally the conduct of business, without undertaking in any way, by voice or vote, to determine any question, preliminary, interlocutory, or final.

In stating this conclusion I present simply the result of the authorities. It is not I who speak; it is the authorities. My own judgment may be imperfect; but here is a mass of testimony, concurring and cumulative, without a single exception, which cannot err.

Plainly and unmistakably, the provision in our Constitution authorizing the Chief Justice to *preside* in the Senate, of which he is not a member, was modelled on the English original. This, according to the language of Mr. Wirt, was the "archetype" our fathers followed. As such it was embodied in the National Constitution, as if the text expressly declared that the Chief Justice, when presiding in the Senate, had all the powers accorded by parliamentary usage to such a functionary when presiding in the upper House of Parliament without being a member thereof. In saying that he shall "preside" the Constitution confers no powers of membership, and by the well-defined term employed limits him to those precise functions sanctioned at the time by immemorial usage.

Thus far I have considered this provision in the light of authorities already known and recognized at the adoption of the National Constitution. This is enough; for it is by these authorities that its meaning must be determined. You cannot reject these without setting at defiance a fixed rule of interpretation, and resorting instead to vague inference or mere imagination, quick-

ened, perhaps, by your desires. Mere imagination and vague inference, quickened, perhaps, by your desires, are out of place when Parliamentary Law is beyond all question.

Pardon me, if I protract this argument by an additional illustration, derived from our own Congressional history. This is found under the parallel provision of the National Constitution relating to the Vice-President, which, after much debate in another generation, received authoritative interpretation: "The Vice-President of the United States shall be *President of the Senate*, but shall have no vote, unless they be equally divided." In other words, the Vice-President, like the Chief Justice, shall *preside* in the Senate, but, unlike the Chief Justice, with a casting vote. His general powers are all implied in the provision that he shall preside.

No question has occurred with regard to the vote of the Vice-President, for this is expressly regulated by the National Constitution. But the other powers of the Vice-President, when presiding in the Senate, are left to Parliamentary Law and express rules. Some of the latter were settled at an early day. From the rules of the Senate at the beginning it appears, that, independent of his casting vote, nothing was originally recognized as belonging to a *presiding* Vice-President beyond his power to occupy the chair. All else was determined by the rules. For instance, Senators, when speaking, are to address the Chair. This rule, which seems to us so superfluous, was adopted 16th April, 1789, early in the session of the first Congress, in order to change the existing Parliamentary Law, under which a member of the upper House of Parliament habitually

addresses his associates, and never the Chair. Down to this day, in England, a peer rising to speak says, "My Lords," and never "My Lord Chancellor," although the latter *presides*. Another rule, adopted at the same date, has a similar origin. By Parliamentary Law, in the upper House of Parliament, when two members rise at the same time, the House, by their cry, indicate who shall speak. This was set aside by a positive rule of the Senate that in such a case "the President shall name the person to speak." The Parliamentary Law, that the presiding officer, whether a member or not a member, shall put the question, was reinforced by an express rule that "all questions shall be put by the President of the Senate."

Although the rules originally provided, that, when a member is called to order, "the President shall determine whether he is in order or not," they failed to declare by whom the call to order should be made. There was nothing conferring this power upon the presiding officer, while by Parliamentary Law in the upper House of Parliament no presiding officer, *as such*, could call to order, whatever he might do as member. The powers of the presiding officer in the Senate were left in this uncertainty, but the small number of Senators and the prevailing courtesy prevented trouble. At last, in the lapse of time, the number increased, and debates assumed a more animated character. Meanwhile, in 1825, Mr. Calhoun became Vice-President. This ingenious person, severely logical, and enjoying at the time the confidence of the country to a rare degree, insisted, that, as presiding officer, he had no power but to carry into effect the rules adopted by the body, and that therefore, in the absence of any rule on the subject, he was

not empowered to call a Senator to order for words spoken in debate. His conclusion was given as follows: —

"The Chair had no power beyond the rules of the Senate. It would stand in the light of a usurper, were it to attempt to exercise such a power. It was too high a power for the Chair. . . . . The Chair would never assume any power not vested in it, but would ever show firmness in exercising those powers that were vested in the Chair."[1]

The question with regard to the powers of the Chair was transferred from the Senate Chamber to the public press, where it was discussed with memorable ability. An article in the "National Journal,"[2] under the signature of "Patrick Henry," attributed to John Quincy Adams, at the time President, assumed that the powers of the Vice-President, in calling to order, were not derived from the Senate, but that they came strictly from the National Constitution itself, which authorizes him to preside, and that in their exercise the Vice-President was wholly independent of the Senate. To this assumption Mr. Calhoun replied in the "National Intelligencer," in two articles,[3] under the signature of "Onslow," where he shows an ability not unworthy of the eminent parliamentarian whose name he for the time adopted. The point in issue was not unlike that now before us. It was insisted, on the one side, that certain powers were inherent in the Vice-President as presiding officer, precisely as it is now insisted that certain powers are inherent in the Chief-Justice when he becomes presiding officer. Mr. Calhoun replied in words applicable to the present occasion: —

[1] Congressional Debates, 19th Cong. 1st Sess., col. 759, 760, May 18, 1826.
[2] June 7, 1826. [3] June 27, 29, 1826.

"I affirm, that, as a presiding officer, the Vice-President has no inherent power whatever, unless that of doing what the Senate may prescribe by its rules be such a power. There are, indeed, inherent powers; but they are in the *body*, and not in the *officer*. He is a mere agent to execute the will of the former. He can exercise no power which he does not hold by delegation, either express or implied." [1]

Then again, in reply to an illustration that had been employed, he says:—

"There is not the least analogy between the rights and duties of a judge and those of a presiding officer in a deliberative assembly. The analogy is altogether the other way. It is between the Court and the House." [2]

It would be difficult to answer this reasoning. Unless all the precedents, in unbroken series, are set aside, a presiding officer not a member of the Senate has no inherent power except to occupy the Chair and to put the question. All else must be derived from grant in the Constitution or in the rules of the body. In the absence of any such grant, we must be contented to observe the mandates of the *Lex Parliamentaria*. The objections of Mr. Calhoun brought to light the feeble powers of our presiding officer, and a remedy was forthwith applied by amendment of the rules, making it his duty to call to order. To his general power as presiding officer was superadded, by express rule, a further power not existing by Parliamentary Law; and such is the rule of the Senate at this day.

I turn away from this Vice-Presidential episode, contenting myself with reminding you how clearly it shows, that, independently of the rules of the Senate, the pre-

[1] Onslow, No. I.: National Intelligencer, June 27, 1826. [2] Ibid.

siding officer *as such* had small powers; that he could do very little more than put the question and direct the Secretary; and, in short, that our fathers, in the interpretation of his powers, had tacitly recognized the time-honored and prevailing usage of Parliament, which in itself is a commanding law. But a Chief Justice, when presiding in the Senate, is not less under this commanding law than the Vice-President.

Thus far I have confined myself to the Parliamentary Law governing the upper House of Parliament and of Congress. Further illustration is found in the position of the Speaker, whether in the House of Commons or the House of Representatives. One cardinal distinction is to be noted at the outset, by which, in both countries, he is distinguished from the presiding officer of the upper House: the Speaker is always a member of the House. As a member he has a constituency which is represented through him; and here is another difference. The presiding officer of the upper House has no constituency; therefore his only duty is *to preside*, unless some other function be superadded by the National Constitution or the rules of the body.

All the authorities make the Speaker merely the organ of the House, except so far as his representative capacity is recognized. In the Commons he can vote only when the House is equally divided; in our House of Representatives his name is sometimes called, although there is no tie; but in each case he votes in his representative capacity, and not as Speaker. In the time of Queen Elizabeth it was insisted, that, because he was "one out of our own number, and *not a stranger*, therefore he hath a voice." But Sir Walter Raleigh re-

plied, that the Speaker "was foreclosed of his voice *by taking that place.*"[1] The latter opinion, which has been since overruled, attests the disposition at that early day to limit his powers.

Cushing, in his elaborate work, brings together numerous illustrations, and gives the essence:—

"The presiding officer, though entitled on all occasions to be treated with the greatest attention and respect by the individual members, because the power and dignity and honor of the assembly are officially embodied in his person, is yet but the servant of the House to declare its will and to obey implicitly all its commands."[2]

"The duties of a presiding officer are of such a nature, and require him to possess so entirely and exclusively the confidence of the assembly, that, with certain exceptions, which will presently be mentioned, he is not allowed to exercise any other functions than those which properly belong to his office; *that is to say, he is excluded from submitting propositions to the assembly, from participating in its deliberations, and from voting.*"[3]

At an early day an English Speaker vividly characterized his relations to the House, when he describes himself as "one of themselves to be the mouth, indeed the servant, of all the rest."[4] This character appears in the memorable incident, when King Charles in his madness entered the Commons, and, going directly to the Speaker, asked for the five members he wished to arrest. Speaker Lenthall answered in ready words, revealing the function of the presiding officer: "May it please your Majesty, I have neither eyes to see nor

[1] D'Ewes's Journals, p. 683.
[2] Lex Parliamentaria Americana, (2d edit.,) § 294. [3] Ibid., § 300.
[4] Hansard's Parliamentary History, April 15, 1640, Vol. II. col. 535.

tongue to speak, *in this place*, but as the House is pleased to direct me, whose servant I am *here*."[1] This reply was as good in law as in patriotism. Different words were employed by Sir William Scott, afterward Lord Stowell, when, in 1802, on moving the election of Mr. Speaker Abbot, he declared that a Speaker must add "to a jealous affection for the privileges of the House an awful sense of its duties."[2] But the early Speaker and the great Judge did not differ. Both attest that the Speaker, when in the Chair, is only the organ of the House, and nothing more.

Passing from the Speaker to the Clerk, we find still another illustration, showing that the word *preside*, under which the Chief Justice derives all his powers, has received an authoritative interpretation in the rules of the House of Representatives, and the commentaries thereon. I cite from Barclay's Digest.

"Under the authority contained in the Manual, and the usage of the House, the Clerk *presided* over its deliberations while there was no Speaker, but simply put questions, and, where specially authorized, preserved order, not, however, undertaking to decide questions of order."[3]

In another place, after stating that in several Congresses there was a failure to elect a Speaker for several days, that in the twenty-sixth Congress there was a failure for eleven days, that in the thirty-first Congress there was a failure for nearly a month, that in the thirty-fourth and thirty-sixth Congresses respectively there was a failure for not less than two months, the author says: —

[1] Hatsell's Precedents, (London, 1818,) Vol. II. p. 242.
[2] Hansard's Parliamentary History, Vol. XXXVI. col. 915.
[3] Barclay's Digest of the Rules of the House of Representatives, &c., p. 44.

"During the three last-named periods, while the House was without a Speaker, the Clerk *presided* over its deliberations; not, however, exercising the functions of Speaker to the extent of deciding questions of order, but, as in the case of other questions, putting them to the House for its decision."[1]

This limited power of the Clerk is described in a marginal note of the author, — "Clerk *presides.*" The author then proceeds: —

"To relieve future Houses of some of the difficulties which grew out of the very limited power of the Clerk as *a presiding officer*, the House of the thirty-sixth Congress adopted the present 146th and 147th rules, which provide, that, 'pending the election of a Speaker, the Clerk shall preserve order and decorum, and shall decide all questions of order that may arise, subject to appeal to the House.'"[2]

From this impartial statement we have a practical definition of the word *preside.* It is difficult to see how it can have a different signification in the National Constitution. The word is the same in the two cases, and it must have substantially the same meaning, whether it concern a Clerk or a Chief Justice. Nobody ever supposed that a *presiding* Clerk could rule or vote. Can a *presiding* Chief Justice?

The claim of a presiding Chief Justice becomes still more questionable when it is considered how positively the Constitution declares that "the Senate shall have the *sole* power to try all impeachments," and, still further, that conviction can be only by "the concurrence of two thirds of *the members present.*" These two provisions accord powers to *the Senate solely.* If a presiding Chief Justice can rule or vote, the Senate has not

[1] Barclay's Digest, p. 114. [2] Ibid.

"the sole power to try"; for ruling and voting, even on interlocutory questions, may determine the trial. A vote to postpone, to withdraw, even to adjourn, might, under peculiar circumstances, exercise a decisive influence. A vote for a protracted adjournment might defeat the trial. Notoriously such votes are among the devices of parliamentary opposition. In doing anything like this, a presiding Chief Justice makes himself *a trier*, and, if he votes on the final judgment, he makes himself *a member of the Senate.* But he cannot be either.

It is only a casting vote that thus far the presiding Chief Justice has assumed to give. But he has the same power to vote always as to vote when the Senate is equally divided. No such power in either case is found in the National Constitution or in Parliamentary Law. By the National Constitution he presides, and nothing more, while by Parliamentary Law there is no casting vote where the presiding officer is not a member of the body. Nor does there seem to be any difference between a casting vote on an interlocutory question and a casting vote on the final question. The former is determined by a majority, and the latter by two thirds; but it has been decided in our country, that, "if the assembly, on a division, stands exactly one third to two thirds, there is then occasion for the giving of a casting vote, because the presiding officer can then, by giving his vote, decide the question either way."[1] This statement reveals still further how inconsistent is the claim of the presiding Chief Justice with the positive requirement of the National Constitution.

[1] Cushing, Lex Parliamentaria Americana, (2d edit.,) § 306.

I would not keep out of sight any consideration which seems in any quarter to throw light on this claim; and therefore I take time to mention an analogy which has been invoked. The exceptional provision in the Constitution, under which the Vice-President has a casting vote on ordinary occasions, is taken from its place in another clause and applied to the Chief Justice. It is gravely argued that the Chief Justice is a substitute for the Vice-President, and, as the latter, by express grant, has a casting vote on ordinary occasions, therefore the Chief Justice has such when presiding on an impeachment. To this argument there are two obvious objections: first, there is no language giving a casting vote to the Chief Justice, and, in the absence of express grant, it is impossible to imply it in opposition to the prevailing rule of Parliamentary Law; and, secondly, it is by no means clear that the Vice-President has a casting vote, when called to preside on an impeachment. On ordinary occasions, in the business of the Senate, the grant is explicit; but it does not follow that this grant can be extended to embrace an impeachment, in face of positive provisions by which the power to *try* and *vote* is confined to *Senators*. According to the undoubted rule of interpretation, *Ut res magis valeat quam pereat*, the casting vote of the Vice-President must be subject to this curtailment. Therefore, if the Chief Justice is regarded as a substitute for the Vice-President, it will be only to find himself again within the same limitations.

I cannot bring this survey to an end without an expression of deep regret that I find myself constrained to differ from the Chief Justice. In faithful fellowship

for long years, we have striven together for the establishment of Liberty and Equality as the fundamental law of this Republic. I know his fidelity, and revere his services; but not on this account can I hesitate the less, when I find him claiming in this Chamber an important power which, in my judgment, is three times denied in the National Constitution: first, when it is declared that the Senate alone shall *try* impeachments; secondly, when it is declared that only *members* shall convict; and, thirdly, when it is declared that the Chief Justice shall *preside*, and nothing more, — thus conferring upon him those powers only which by Parliamentary Law belong to a presiding officer not a member of the body. In the face of such a claim, so entirely without example, and of such possible consequences, I cannot be silent. Reluctantly and painfully I offer this respectful protest.

There is a familiar saying of jurisprudence, that it is the part of a good judge to amplify his jurisdiction: *Boni judicis est ampliare jurisdictionem.* This maxim, borrowed from the horn-books, was originally established for the sake of justice and humanity, that they might not fail; but it has never been extended to other exercises of authority. On the contrary, all accepted maxims are against such assumption in other cases. Never has it been said that it is the part of a good presiding officer to amplify his power; and there is at least one obvious reason: a presiding officer is only an *agent*, acting always in presence of his *principal.* Whatever the promptings of the present moment, such an amplification can find no sanction in the National Constitution, or in that Parliamentary Law from which there is no appeal.

Thus, which way soever we turn, — whether to the National Constitution, or to Parliamentary Law, as illustrated in England or the United States, — we are brought to conclude that the Chief Justice in the Senate Chamber is not in any respect Chief Justice, but only presiding officer; that he has no judicial powers, or, in other words, powers *to try*, but only the powers of a presiding officer not a member of the body. According to the injunction of the Constitution, he can *preside*, but this is all, unless other powers are superadded by concession of the Senate, subject always to the constitutional limitation that the Senate alone can *try*, and, therefore, alone can rule or vote on questions which enter into the trial. The function of a presiding officer may be narrow, but it must not be disparaged. For a succession of generations, great men in the law, Chancellors and Chief Justices, have not disdained to discharge it. Out of the long and famous list I mention one name of surpassing authority: Somers, the illustrious defender of constitutional liberty, unequalled in debate as in judgment, exercised this function without claiming other power. He was satisfied to preside. Such an example is not unworthy of us. If the present question could be determined by sentiments of personal regard, I should gladly say that our Chief Justice is needed to the Senate more than the Senate is needed to him. But the National Constitution, which has regulated the duties of all, leaves us no alternative. We are the Senate; he is the presiding officer, — although, whether in the Court Room or the Senate Chamber, he is always the most exalted servant of the law. This character he cannot lose by change of seat. As such he lends to this historic occasion the dignity of his

presence and the authority of his example. Sitting in that Chair, he can do much to smooth the course of business, and to fill the Chamber with the spirit of justice. Under the rules of the Senate, he can become its organ,— but nothing more.

EXPULSION OF THE PRESIDENT.

OPINION IN THE CASE OF THE IMPEACHMENT OF ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES, MAY 26, 1868.

I VOTED against the rule of the Senate allowing opinions to be filed in this proceeding, and regretted its adoption. With some hesitation I now take advantage of the opportunity, if not the invitation, it affords. Voting "Guilty" on all the articles, I feel that there is little need of explanation or apology. Such a vote is its own best defender. But I follow the example of others.

BATTLE WITH SLAVERY.

THIS is one of the last great battles with Slavery. Driven from these legislative chambers, driven from the field of war, this monstrous power has found refuge in the Executive Mansion, where, in utter disregard of Constitution and law, it seeks to exercise its ancient domineering sway. All this is very plain. Nobody can question it. Andrew Johnson is the impersonation of the tyrannical Slave Power. In him it lives again. He is lineal successor of John C. Calhoun and Jefferson Davis, and he gathers about him the same supporters. Original partisans of Slavery, North and South, habitual compromisers of great principles, maligners of the Declaration

of Independence, politicians without heart, lawyers for whom a technicality is everything, and a promiscuous company who at every stage of the battle have set their faces against Equal Rights, — these are his allies. It is the old troop of Slavery, with a few recruits, ready as of old for violence, cunning in device, and heartless in quibble. With the President at their head, they are now intrenched in the Executive Mansion.

Not to dislodge them is to leave the country a prey to a most hateful tyranny. Especially is it to surrender the Unionists of the Rebel States to violence and bloodshed. Not a month, not a week, not a day should be lost. The safety of the Republic requires action at once. Innocent men must be rescued from sacrifice.

I would not in this judgment depart from the moderation proper to the occasion; but God forbid, that, when called to deal with so great an offender, I should affect a coldness I cannot feel! Slavery has been our worst enemy, assailing all, murdering our children, filling our homes with mourning, darkening the land with tragedy; and now it rears its crest anew, with Andrew Johnson as its representative. Through him it assumes once more to rule and impose its cruel law. The enormity of his conduct is aggravated by his barefaced treachery. He once declared himself the Moses of the colored race. Behold him now the Pharaoh! With such treachery in such a cause there can be no parley. Every sentiment, every conviction, every vow against Slavery must be directed against him. Pharaoh is at the bar of the Senate for judgment.

The formal accusation is founded on recent transgressions, enumerated in articles of impeachment; but it is wrong to suppose that this is the whole case. It

is very wrong to try this impeachment merely on these articles. It is unpardonable to higgle over words and phrases, when, for more than two years, the tyrannical pretensions in evidence before the Senate have been manifest, as I shall show, in terrible, heart-rending consequences.

IMPEACHMENT A POLITICAL PROCEEDING.

BEFORE entering upon the formal accusation instituted by the House of Representatives of the United States in their own name and in the name of all the people thereof, it is important to understand the nature of the proceeding. And here on the threshold we encounter the effort of the apologists seeking in every way to confound this great constitutional trial with an ordinary case at *Nisi Prius*, and to win for the criminal President an Old Bailey acquittal, where on some quibble the prisoner is allowed to go without day. From beginning to end this has been painfully apparent, thus degrading the trial and baffling justice. Point by point has been pressed, sometimes by counsel and sometimes even by Senators, leaving the substantial merits untouched, as if, on a solemn occasion involving the safety of the Republic, there could be any other question.

The first effort was to call the Senate, sitting for the trial of impeachment, a Court, and not a Senate. Ordinarily, names are of little consequence; but it cannot be doubted that this appellation has been made the starting-point for technicalities proverbial in courts. Constantly we have been reminded of what is called our judicial character, and of the supplementary oath we have taken, as if a Senator were not always under

oath, and as if other things within the sphere of his duties were not equally judicial in character. Out of this plausible assumption has come that fine-spun thread which lawyers know so well how to weave.

The whole mystification disappears, when we look at the National Constitution, which in no way speaks of impeachment as judicial, and in no way speaks of the Senate as a court. On the contrary, it uses positive language inconsistent with this assumption and all its pretended consequences. On this head there can be no doubt.

By the National Constitution it is expressly provided that "*the judicial power* of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," — thus positively excluding the Senate from any exercise of "the judicial power." And yet this same Constitution provides that "the Senate shall have the sole power to try all impeachments." In the face of these plain texts it is impossible not to conclude, that, in trying impeachments, Senators exercise a function which is not regarded by the National Constitution as "judicial," or, in other words, as subject to the ordinary conditions of judicial power. Call it senatorial or political, it is a power by itself, and subject to its own conditions.

Nor can any adverse conclusion be drawn from the unauthorized designation of "court" which has been foisted into our proceedings. This term is very expansive, and sometimes very insignificant. In Europe it means the household of a prince. In Massachusetts it is still applied to the Legislature of the State, which is known as the General Court. If applied to the Senate, it must be interpreted by the National Constitu-

tion, and cannot be made in any respect a source of power or a constraint.

It is difficult to understand how this term, which plays such a part in present pretensions, obtained its vogue. It does not appear in English impeachments, although there is reason for it there which is not found here. From ancient times, Parliament, including both Houses, has been called a court, and the House of Lords is known as a court of appeal. The judgment on English impeachments embraces not merely removal from office, as under the National Constitution, but also punishment; and yet it does not appear that the Lords sitting on impeachments are called a court. They are not so called in any of the cases, from the first, in 1330, entitled simply, "Impeachment of Roger Mortimer, Earl of March, for Treason," down to the last, in 1806, entitled, "Trial of the Right Honorable Henry Lord Viscount Melville, before the Lords' House of Parliament in Westminster Hall, for High Crimes and Misdemeanors whereof he was accused in certain Articles of Impeachment." In the historic case of Lord Bacon, we find, at the first stage, this title, "Proceedings in Parliament against Francis Bacon Lord Verulam," and, after the impeachment was presented, the simple title, "Proceedings in the House of Lords." Had this simplicity been followed among us, there would have been one source of misunderstanding the less.

There is another provision of the National Constitution which testifies still further, and, if possible, more completely. It is the limitation of the judgment in cases of impeachment, making it political and nothing else. It is not punishment, but protection to the Republic. It is confined to removal from office and dis-

qualification; but, as if aware that this was no punishment, the National Constitution further provides that this judgment shall be no impediment to indictment, trial, judgment, and punishment "according to law." Thus again is the distinction declared between an impeachment and a proceeding "according to law." The former, which is political, belongs to the Senate, which is a political body; the latter, which is judicial, belongs to the courts, which are judicial bodies. The Senate removes from office; the courts punish. I am not alone in drawing this distinction. It is well known to all who have studied the subject. Early in our history it was put forth by the distinguished Mr. Bayard, of Delaware, the father of Senators, in the case of Blount;[1] and it is adopted by no less an authority than our highest commentator, Judge Story, who was as much disposed as anybody to amplify the judicial power. In speaking of this text, he says that impeachment "is not so much designed to punish an offender as *to secure the State against gross official misdemeanors;* it touches neither his person nor his property, *but simply divests him of his political capacity.*"[2] All this seems forgotten by certain apologists on the present trial, who, assuming that impeachment was a proceeding "according to law," have treated the Senate to the technicalities of the law, to say nothing of the law's delay.

Discerning the true character of impeachment under the National Constitution, we are constrained to confess that it is a political proceeding before a political body with political purposes; that it is founded on political offences, proper for the consideration of a po-

[1] Proceedings on the Impeachment of William Blount, p. 28.
[2] Commentaries, (2d edit.,) § 803, Vol. I. p. 560.

litical body, and subject to a political judgment only. Even in cases of treason and bribery, the judgment is political, and nothing more. If I were to sum up in one word the object of impeachment under the National Constitution, meaning what it has especially in view, with its practical limitation, I should say *expulsion from office.* The present question is, Shall Andrew Johnson, on the case before the Senate, be expelled from office?

Expulsion from office is not unknown to our proceedings. By the National Constitution a Senator may be expelled with "the concurrence of two thirds," precisely as a President may be expelled with "the concurrence of two thirds." In each case the same exceptional vote of two thirds is required. Do not the two illustrate each other? From the nature of things, they are essentially similar in character, — except that on expulsion of the President the motion is made by the House of Representatives at the bar of the Senate, while on expulsion of a Senator the motion is made by a Senator. How can we require a technicality of proceeding in the one which is rejected in the other? If the Senate is a court, bound to judicial forms on the expulsion of the President, must it not be the same on the expulsion of a Senator? But nobody attributes to it any such strictness in the latter case. Numerous precedents attest how, in dealing with its own members, the Senate seeks substantial justice without reference to form. In the case of Blount, which is the first in our history, the expulsion was on the report of a committee, declaring him "guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator."[1] At

[1] Annals of Congress, 5th Cong., July 8, 1797, col. 44.

least one Senator has been expelled on simple motion.[1] Others have been expelled without any formal allegation or formal proof.

According to another provision of the National Constitution, overriding both cases, "each House may determine the rules of its proceedings." The Senate, on the expulsion of its own members, has already done this, and set an example of simplicity. But it has the same power over its rules of proceeding on the expulsion of the President; and there can be no reason for simplicity in the one case not equally applicable in the other. Technicality is as little consonant with the one as with the other. Each has for its object the public safety. For this the Senator is expelled; for this, also, the President is expelled. *Salus populi suprema lex.* The proceedings in each case must be in subordination to this rule.

There is one formal difference, under the National Constitution, between the power to expel a Senator and the power to expel the President. The power to expel a Senator is unlimited in terms. The Senate may, "with the concurrence of two thirds, expel a member," nothing being said of the offence; whereas the President can be expelled only for "treason, bribery, or *other high crimes and misdemeanors.*" A careful inquiry will show that under the latter words there is such a latitude as to leave little difference between the two cases. This brings us to the question of impeachable offences.

POLITICAL OFFENCES ARE IMPEACHABLE OFFENCES.

So much depends on the right understanding of this proceeding, that, even at the risk of protracting the dis-

[1] See, *ante*, Vol. VIII. pp. 12, 13: Expulsion of Trusten Polk.

cussion, I cannot hesitate to consider this branch of the subject, although what I have already said may render it superfluous. What are impeachable offences has been much considered in this trial, and sometimes with very little appreciation of the question. Next to the mystification from calling the Senate a court has been that other mystification from not calling the transgressions of Andrew Johnson "impeachable offences."

It is sometimes boldly argued that there can be no impeachment under the National Constitution, unless for an offence defined and made indictable by Act of Congress, and therefore Andrew Johnson must go free, unless it can be shown that he is such an offender. But this argument mistakes the Constitution, and also mistakes the whole theory of impeachment.

It mistakes the Constitution in attributing to it any such absurd limitation. The argument is this: Because in the National Constitution there are no Common-Law crimes, therefore there are no such crimes on which an impeachment can be maintained. But there are two answers: first, that the District of Columbia, where the President resides and exercises his functions, was once part of Maryland, where the Common Law prevailed; that, when it came under the national jurisdiction, it brought with it the whole body of the law of Maryland, including the Common Law; and that at this day the Common Law of crimes is still recognized here. But the second answer is stronger still. By the National Constitution, *expulsion from office* is "on impeachment for and conviction of treason, bribery, *or other high crimes and misdemeanors*"; and this, according to another clause of the Constitution, is "the supreme law of the land." Now, when a constitutional provision can

be executed without superadded legislation, it is absurd to suppose that such legislation is necessary. Here the provision executes itself without reënactment; and as for definition of "treason" and "bribery" we resort to the Common Law, so for definition of "high crimes and misdemeanors" we resort to the Parliamentary Law and the instances of impeachment by which it is illustrated. Thus clearly the whole testimony of English history enters into this case with its authoritative law. From the earliest text-writer on this subject[1] we learn the undefined and expansive character of these offences; and these instances are in point now. Thus, where a Lord Chancellor has been thought to put the great seal to an ignominious treaty, a Lord Admiral to neglect the safeguard of the seas, an Ambassador to betray his trust, a Privy Councillor to propound dishonorable measures, a confidential adviser to obtain exorbitant grants or incompatible employments, or *where any magistrate has attempted to subvert the fundamental law or introduce arbitrary power,*—all these are high crimes and misdemeanors, according to these precedents, by which the National Constitution must be interpreted. How completely they cover the charges against Andrew Johnson, whether in the formal accusation or in the long antecedent transgressions to which I shall call attention as an essential part of the case, nobody can question.

Broad as this definition may seem, it is in harmony with the declared opinions of the best minds that have been turned in this direction. Of these none so great as Edmund Burke, who, as manager on the impeachment of Warren Hastings, excited the admiration of all by varied stores of knowledge and philosophy, illu-

[1] Wooddeson, Lectures, Vol. II. p. 602.

mined by the rarest eloquence, marking an epoch of British history. Thus spoke the greatest genius that has ever explained the character of impeachment: —

"It is by this tribunal that statesmen who abuse their power are tried before statesmen and by statesmen, upon solid principles of State morality. *It is here that those who by an abuse of power have polluted the spirit of all laws can never hope for the least protection from any of its forms.* It is here that those who have refused to conform themselves to the protection of law can never hope to escape through any of its defects."[1]

The value of this testimony is not diminished because the orator spoke as manager. By professional license an advocate may state opinions not his own, but a manager cannot. Appearing for the House of Representatives and all the people, he speaks with the responsibility of a judge, so that his words may be cited hereafter. Here I but follow the claim of Mr. Fox.[2] Therefore the words of Burke are as authoritative as beautiful.

In different, but most sententious terms, Mr. Hallam, who is so great a light in constitutional history, thus exhibits the latitude of impeachment and its comprehensive grasp: —

"A minister is answerable for *the justice, the honesty, the utility of all measures* emanating from the Crown, *as well as for their legality;* and thus the executive administration is, or ought to be, subordinate, in all great matters of policy, to the superintendence and virtual control of the two Houses of Parliament."[3]

[1] Speeches of the Managers and Counsel in the Trial of Warren Hastings, ed. Bond, Vol. I. p. 4.

[2] Ibid., pp. 183, seqq.

[3] Constitutional History of England, (2d edit.,) Chap. XII., Vol. II. p. 554.

Thus, according to this excellent witness, even failure in justice, honesty, and utility, as well as in legality, may be the ground of impeachment; and the Administration should in all great matters of policy be subject to the two Houses of Parliament, — the House of Commons to impeach, and the House of Lords to try. Here again the case of Andrew Johnson is provided for.

Our best American lights are similar, beginning with the "Federalist" itself, which teaches that impeachment is for "those offences which proceed from *the misconduct of public men*, or, in other words, from the abuse or violation of some public trust: they are of a nature which may with peculiar propriety be denominated *political*, as they relate chiefly to injuries done immediately to the society itself."[1] If ever injuries were done immediately to society itself, if ever there was an abuse or violation of public trust, if ever there was misconduct of a public man, all these are now before us in the case of Andrew Johnson. The "Federalist" has been echoed ever since by all who have spoken with knowledge and without prejudice. First came the respected commentator, William Rawle, who specifies among causes of impeachment "the fondness for the inordinate extension of power," "the influence of party and of prejudice," "the seductions of foreign states," "the baser appetite for illegitimate emolument," and "the involutions and varieties of vice, too many and too artful to be anticipated by positive law," all resulting in what the commentator says are "not unaptly termed *political offences*."[2] And thus Rawle unites with the "Federalist" in stamping upon impeachable offences the

[1] No. LXV. [2] View of the Constitution, (2d edit.,) p. 211.

epithet "political." If in the present case there has been on the part of Andrew Johnson no base appetite for illegitimate emolument and no yielding to foreign seductions, there has been most notoriously the influence of party and prejudice, also to an unprecedented degree an individual extension of power, and an involution and variety of vice impossible to be anticipated by positive law, — all of which, in gross or in detail, is impeachable. Here it is in gross. Then comes Story, who, writing with the combined testimony of English and American history before him, and moved only by a desire of truth, records his opinion with all the original emphasis of the "Federalist." His words are like a judgment. The process of impeachment, according to him, is intended to reach "personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of *political office*"; and the commentator adds, that it "is to be exercised over offences which are committed by public men in violation of their public trust and duties," that "the offences to which it is ordinarily applied are of a *political* character," and that, strictly speaking, "the power partakes of a *political* character."[1] Every word here is like an ægis for the present case. The later commentator, Curtis, is, if possible, more explicit even than Story. According to him, an impeachment "is not necessarily a trial for crime"; its purposes "lie wholly beyond the penalties of the statute or the customary law"; and this commentator does not hesitate to say that it is a proceeding "to ascertain *whether cause exists for removing a public officer from office*"; and he adds, that such cause of removal "may exist where no offence

[1] Commentaries, (2d edit.,) Vol. I. §§ 746, 764.

against positive law has been committed, — as where the individual has, from immorality, or imbecility, *or maladministration, become unfit to exercise the office.*"[1] Here again the power of the Senate over Andrew Johnson is vindicated so as to make all doubt or question absurd.

I close this question of impeachable offences by asking you to consider that all the cases which have occurred in our history are in conformity with the rule which so many commentators have announced. The several trials of Pickering, Chase, Peck, and Humphreys exhibit its latitude in different forms. Official misconduct, including in the cases of Chase and Humphreys offensive utterances, constituted the high crimes and misdemeanors for which they were respectively arraigned. These are precedents. Add still further, that Madison, in debate on the power of removal, at the very beginning of our Government, said: "I contend that *the wanton removal of meritorious officers* would subject the President to impeachment and removal from his own high trust."[2] But Andrew Johnson, standing before a crowd, said of meritorious officers that he would "kick them out,"[3] and forthwith proceeded to execute his foul-mouthed menace. How small was all that Madison imagined, how small was all that was spread out in the successive impeachments of our history, if gathered into one case, compared with the terrible mass now before us!

[1] History of the Constitution, pp. 260, 261.

[2] Speech in the House of Representatives, June 17, 1789, on the Bill for establishing the Department of Foreign Affairs: Annals of Congress, 1st Cong. 1st Sess., col. 498.

[3] Speech at St. Louis, September 8, 1866: McPherson's Political History of the United States during Reconstruction, p. 140.

From all these concurring authorities, English and American, it is plain that impeachment is a power broad as the National Constitution itself, and applicable to the President, Vice-President, and all civil officers through whom the Republic suffers or is in any way imperilled. Show me an act of evil example or influence committed by a President, and I show you an impeachable offence, great in proportion to the scale on which it is done, and the consequences menaced. The Republic must receive no detriment; and impeachment is a power by which this sovereign rule is maintained.

UNTECHNICAL FORM OF PROCEDURE.

THE form of procedure has been noticed in considering the political character of impeachment; but it deserves further treatment by itself. Here we meet the same latitude. It is natural that the trial of political offences, before a political body, with a political judgment only, should have less of form than a trial at Common Law; and yet this obvious distinction is constantly disregarded. The authorities, whether English or American, do not leave the question open to doubt.

An impeachment is not a technical proceeding, as at *Nisi Prius* or in a county court, where the rigid rules of the Common Law prevail. On the contrary, it is a proceeding according to Parliamentary Law, with rules of its own, unknown in ordinary courts. The formal statement and reduplication of words, constituting the stock-in-trade of so many lawyers, are exchanged for a broader manner, more consistent with the transactions of actual life. The precision of his-

tory and of common sense is enough, without the technical precision of an indictment.

From time immemorial there has been a just distinction between proceedings in Parliament and proceedings in the ordinary courts of justice, which I insist shall not be abandoned. The distant reign of Richard the Second, beyond the misfortunes touching us so much in Shakespeare, supplies a presiding rule which has been a pole-star of Constitutional Law; nor is this in any vague, uncertain language, but in the most clear and explicit terms, illumined since by great lights of law.

On what was called an appeal in Parliament, or impeachment, it has solemnly declared that the Lords were not of right obliged to proceed according to the course or rules of the Roman law or according to the law or usage of any of the inferior courts of Westminster Hall, but by the law and usage of Parliament, which was itself a court.

"In this Parliament [in the 11th year of King Richard the Second, A. D. 1387–88] all the Lords then present, spiritual as well as temporal, claimed as their franchise that the weighty matters moved in this Parliament, and which shall be moved in other Parliaments in future times, touching the peers of the land, shall be managed, adjudged, and discussed by the course of Parliament, and in no sort by the Law Civil, or by the common law of the land, used in the other lower courts of the kingdom."[1]

The Commons approved the proceedings, and it has been remarked, in an important official report, that

[1] Rolls of Parliament, Vol. III. p. 244, § 7, — cited in Report from the Committee of the House of Commons appointed to inspect the Lords' Journals, April 30, 1794: Burke's Works, (Boston, 1866–67,) Vol. XI. p. 11.

"neither then nor ever since have they made any objection or protestation that the rule laid down by the Lords . . . . ought not to be applied to the impeachments of commoners as well as peers." [1] Accordingly Lord Coke declares, that "all weighty matters in any Parliament moved concerning the peers of the realm, or commoners in Parliament assembled, ought to be determined, and adjudged, and discussed by the course of the Parliament, and not by the Civil Law, nor yet by the common laws of this realm used in more inferior courts." Then, founding on the precedent of 11th Richard the Second, he announces, that "judges ought not to give any opinion of *a matter of Parliament,* because it is not to be decided by the common laws, but *secundum legem et consuetudinem Parliamenti*"; and he adds, "So the judges in divers Parliaments have confessed." [2]

But impeachment is "a matter of Parliament," whether in England or in the United States. It was so at the beginning, and has been ever since.

Even anterior to Richard the Second the same conclusion was recognized, with illustrative particularity, as appears by the trial of those who murdered King Edward the Second, thus commented by an eminent writer on Criminal Law, who was also an experienced judge, Foster: —

"It is well known, that, in parliamentary proceedings of this kind, it is and ever was sufficient that matters appear with proper light and certainty to a common understanding, without that *minute exactness* which is required in criminal proceedings in Westminster Hall." [3]

[1] Report from the Committee to inspect the Lords' Journals: Burke's Works, Vol. XI. p. 12.

[2] 4 Institutes, p. 15. Burke, Vol. XI. p. 13.

[3] Crown Law, Discourse IV., pp. 389, 390. Burke, Vol. XI. p. 28.

Thus early was the "minute exactness" of a criminal court discarded, while the proceedings were adapted to "a common understanding." This becomes important, not only as a true rule of procedure, but as an answer to some of the apologists, especially the Senator from West Virginia [Mr. VAN WINKLE], who makes technicality a rule and essential condition.

Accordingly by law and custom of Parliament we are to move; and here we meet rules of pleading and principles of evidence entirely different from those of the Common Law, but established and fortified by a long line of precedents. This stands forth in the famous "Report from the Committee of the House of Commons appointed to inspect the Lords' Journals in relation to their Proceedings on the Trial of Warren Hastings," which, beyond its official character, is enhanced as the production of Edmund Burke.

"Your Committee do not find that any rules of pleading, as observed in the inferior courts, have ever obtained in the proceedings of the High Court of Parliament, in a cause or matter in which the whole procedure has been within their original jurisdiction. Nor does your Committee find that any demurrer or exception, as of false or erroneous pleading, hath been ever admitted to any impeachment in Parliament, as not coming within the form of the pleading."[1]

This principle appears in the great trial of Strafford, 16th Charles the First, 1640–41, stated by no less a person than Pym, on delivering a message of the Commons reducing the charges to more particularity: "Not that they are bound by this way of *special* charge; and therefore, as they have taken care in their House, upon protestation, that this shall be no prejudice to bind

[1] Burke's Works, Vol. XI. p. 13.

them from proceeding *upon generals* in other cases, and that they are not to be ruled by proceedings in other courts, which protestation they have made for preservation of power of Parliaments, so they desire that the like care may be had in your Lordships' House." [1] In this broad language is a just rule applicable to the present case.

The question came to formal judgment on the memorable trial of the Tory preacher, Sacheverell, March 10, 1709–10, impeached for high crimes and misdemeanors, on account of two sermons in which he put forth the doctrines of Non-Resistance and denounced the Revolution of 1688, by which English liberty was saved. After argument on both sides, and questions propounded by the Lords, the judges delivered their opinion *seriatim*, that, by the law of England and the constant practice of Westminster Hall, "the particular words supposed to be criminal ought to be specified in indictments or informations." And yet, in face of this familiar and indisputable rule of the Common Law, thus pointedly declared, the Lords solemnly resolved:—

"That, by the law and usage of Parliament, in prosecutions by impeachments for high crimes and misdemeanors, by writing or speaking, the particular words supposed to be criminal are not necessary to be expressly specified in such impeachments." [2]

The respondent, being found guilty, moved in arrest of judgment:—

"That no entire clause, sentence, or expression, contained in either of his sermons or dedications, is particularly set

[1] Lords' Journals, Vol. IV. p. 133. Burke's Works, Vol. XI. p. 14.

[2] Howell's State Trials, Vol. XV. col. 467. Lords' Journals, March 14, 1709–10, Vol. XIX. p. 107.

forth in his impeachment, which he has already heard the judges declare to be necessary in all cases of indictments or informations." [1]

The Lord Chancellor, denying the motion, communicated to the respondent the resolution already adopted after full debate and consideration, and added: —

"So that, in their Lordships' opinion, the law and usage of the High Court of Parliament being a part of the law of the land, and that usage not requiring the words should be *expressly specified* in impeachments, the answer of the judges, which related only to the course used in indictments and informations, does not in the least affect your case." [2]

And so the judgment was allowed to stand.

The substantial justice of this proceeding is seen, when it is considered that the whole of the libel had been read at length, so that the respondent had the benefit of anything which could be alleged in extenuation or exculpation, as if the libellous sermons had been entered *verbatim*. The Report already cited presents the practical conclusion: —

"It was adjudged sufficient to state the crime generally in the impeachment. The libels were given in evidence; and it was not then thought of, that nothing should be given in evidence which was not specially charged in the impeachment." [3]

The principle thus solemnly adjudged was ever afterwards asserted by the managers for the House of Commons in all its latitude, and with an energy, zeal, and earnestness proportioned to the magnitude of the inter-

[1] Howell's State Trials, Vol. XV. col. 471.
[2] Ibid., col. 473. Lords' Journals, March 23, 1709–10, Vol. XIX. p. 121.
[3] Burke's Works, Vol. XI. pp. 19, 20.

ests involved, — as appeared conspicuously on the impeachment for high treason of the Lords who had taken part in the Rebellion of 1715 to bring back the Stuarts. Lord Wintoun, after conviction, moved in arrest of judgment, and excepted against the impeachment for error, on account of the treason not being described with sufficient certainty, — the day on which the treason was committed not having been alleged. The learned counsel, arguing that Parliamentary Law was part of Common Law, submitted "whether there is not the same certainty required in one method of proceeding at the Common Law as in another."[1] To this ingenious presentment, by which proceedings in Parliament were brought within the grasp of the Common Law, the able and distinguished managers replied with resolution, asserting the supremacy of Parliamentary Law. Walpole, afterwards the famous Prime Minister, began: —

"Those learned gentlemen seem to forget *in what court they are.* They have taken up so much of your Lordships' time in quoting of authorities and using arguments to show your Lordships what would quash an indictment in the courts below, that they seem to forget they are now in a court of Parliament and on an impeachment of the Commons of Great Britain. . . . . I hope it will never be allowed here as a reason, that what quashes an indictment in the courts below will make insufficient an impeachment brought by the Commons of Great Britain."[2]

The Attorney-General supported Walpole: —

"I would take notice that we are upon an impeachment, and not upon an indictment. The courts below have set forms to themselves, which have prevailed for a long course

[1] Howell's State Trials, Vol. XV. col. 877. [2] Ibid., col. 883, 884.

of time, and thereby are become the forms by which those courts are to govern themselves; but it never was thought that the forms of those courts had any influence on the proceedings of Parliament." [1]

Cowper, a brother of the Lord Chancellor of that name, said: —

"If the Commons, in preparing articles of impeachment, should govern themselves by precedents of indictments, in my humble opinion they would depart from the ancient, nay, the constant, usage and practice of Parliament." [2]

Sir William Thomson followed: —

"The precedents in impeachments are not so *nice and precise in form* as in the inferior courts." [3]

The judges, in answer to questions propounded, declared the necessity in indictments of mentioning "a certain day." But the Lords, in conformity with ancient usage, set aside this technical objection, and announced: —

"That the impeachment is sufficiently certain in point of time, according to the forms of impeachments in Parliament." [4]

Thus do authoritative precedents exhibit a usage of Parliament, or Parliamentary Law, unlike that of the Common Law, which on trials of impeachment seeks substantial justice, but is not "nice and precise in form." If the proceedings are not absolutely according to the rule of reason, plainly the technicalities of the Common Law are out of place. It is enough, if

[1] Howell's State Trials, Vol. XV. col. 885. [2] Ibid., col. 886.
[3] Ibid., col. 887.
[4] Lords' Journals, March 19, 1715-16, Vol. XX. p. 316.

they are clear to "a common understanding," without the "minute exactness" of a criminal court. But this is according to reason. A mere technicality, much more a quibble, often efficacious on a demurrer, is a wretched anachronism, when we are considering a question of political duty. Especially must this be so under the genius of republican institutions. The latitude established in England cannot be curtailed in the United States, and it becomes more essential in proportion to the elevation of the proceedings. Ascending into the region of history, the laws of history cannot be neglected.

Even if the narrow rules and exclusions of the Common Law could be tolerated on the impeachment of an inferior functionary, they must be disclaimed on the trial of a chief magistrate, involving the public safety. The technicalities of law were invented for protection against power, not for the immunity of a usurper or tyrant. When set up for the safeguard of the weak, they are respectable, but on impeachments they are intolerable. Here again I cite Edmund Burke:—

"God forbid that those who cannot defend themselves upon their merits and their actions may defend themselves behind those fences and intrenchments that are made to secure the liberty of the people, that power and the abusers of power should cover themselves by those things which were made to secure liberty!"[1]

Never was there a case where this principle was more applicable than now.

The origin of impeachment in the National Constitution and contemporary authority vindicate this very

[1] Speeches of the Managers and Counsel in the Trial of Warren Hastings, ed. Bond, Vol. I. p. 10.

latitude. In this light the proceeding was explained by the "Federalist," in words which should be a guide now: —

"*This can never be tied down by such strict rules*, either in the delineation of the offence by the prosecutors or in the construction of it by the judges, as in common cases serve to limit the discretion of courts in favor of personal security."[1]

This article was by Alexander Hamilton, writing in concert with James Madison and John Jay. Thus, by the highest authority, at the adoption of the National Constitution, it is declared that impeachment "can never be tied down by strict rules," and that this latitude is applicable to "the delineation of the offence," meaning thereby the procedure or pleading, and also to "the construction of the offence," in both of which cases the "discretion" of the Senate is enlarged beyond that of ordinary courts, and so the ancient Parliamentary Law is vindicated, and the Senate is recognized within its sphere.

RULES OF EVIDENCE.

From form of procedure I pass to rules of evidence; and here again the Senate must avoid technicalities, and not allow any artificial rule to shut out the truth. It would allow no such thing on the expulsion of a Senator. How allow it on the expulsion of a President? On this account I voted to admit all evidence offered during the trial, — believing, in the first place, that it ought to be heard and considered, and, in the second place, that, even if shut out from this Chamber, it could not be shut out from the public, or be shut

[1] The Federalist, No. LXV.

out from history, both of which must be the ultimate judges. On the impeachment of Prince Polignac and his colleagues of the French Cabinet, in 1830, for signing the ordinances which cost Charles the Tenth his throne, some forty witnesses were sworn, without objection, in a brief space of time, and no testimony was excluded. An examination of the two volumes entitled "Procès des Derniers Ministres de Charles X." confirms what I say. This example, which commends itself to the enlightened reason, seems in harmony with declared principles of Parliamentary Law.

As in pleadings, so in evidence, the Law of Parliament, and not the Common Law, is the guide of the Senate. In other courts the rules vary, as on trial by jury in the King's Bench depositions are not received, while in Chancery just the reverse is the case. The Court of Parliament has its own rules. Here again I quote the famous Report:—

"No doctrine or rule of law, much less the practice of any court, ought to have weight or authority in Parliament further than as such doctrine, rule, or practice is agreeable to the proceedings in Parliament, or hath received the sanction of approved precedent there, *or is founded on the immutable principles of substantial justice*, without which, your Committee readily agrees, no practice in any court, high or low, is proper or fit to be maintained."[1]

The true rule was enunciated:—

"The Court of Parliament ought to be open with great facility to the production of all evidence, except that which the precedents of Parliament teach them authoritatively to reject, or which hath no sort of natural aptitude directly

[1] Burke's Works, Vol. XI. p. 60.

or circumstantially to prove the case. . . . . The Lords ought *to enlarge, and not to contract, the rules of evidence,* according to the nature and difficulties of the case."[1]

Its point appears in a single sentence: —

"To refuse evidence is to refuse to hear the cause."[2]

In striking harmony with this most reasonable conclusion is the well-known postulate of Jeremy Bentham, who gave so much thought to the Law of Evidence: "Evidence is the basis of justice: to exclude evidence is to exclude justice."[3]

The precedents of impeachment, including the trials of Strafford, Sacheverell, Macclesfield, and the Rebel Lords in 1715, and again in 1745, all illustrate the liberality of the proceedings, while the judgment of Lord Hardwicke, in concurrence with the rest of the judges, and with the support of the bar, announced, that "the judges and sages of the law have laid it down that there is but *one* general rule of evidence, — the best that the nature of the case will admit."[4] And this is the master rule governing all subordinate rules. In harmony with it is another announced by Lord Mansfield: "All evidence is according to the subject-matter to which it is applied."[5] These two rules are expansive, and not narrow, — liberal, and not exclusive. They teach us to regard "the nature of the case" and "the subject-matter." But the case is an impeachment, and the subject-matter is misbehavior in high office. Before us is no common delinquent, whose of-

[1] Burke's Works, Vol. XI., p. 64. [2] Ibid.

[3] Rationale of Judicial Evidence, Book IX. Part I. Ch. 3: Works, ed. Bowring, (Edinburgh, 1843,) Vol. VII. p. 338.

[4] Omychund *v.* Barker, 1 Atkyns, R., 49.

[5] Mayor of Hull *v.* Horner, Cowper, R., 108.

fence is against a neighbor, but the Chief Magistrate, who has done wrong to his country. One has injured an individual, the other has injured all. Here again I quote the Report: —

"The abuses stated in our impeachment are not those of mere individual, natural faculties, but the abuses of civil and political authority. The offence is that of one who has carried with him, in the perpetration of his crimes, whether of violence or of fraud, the whole force of the State." [1]

In such a case there must be a latitude of evidence commensurate with the arraignment. And thus we are brought to the principle with which I began.

There are other rules, which it is not too late to profit by. One relates to the burden of proof, and is calculated to have a practical bearing. Another relates to matters of which the Senate will take cognizance without any special proof, thus importing into the case unquestionable evidence explaining and aggravating the transgressions charged.

1. Look carefully at the object of the trial. Primarily it is for the expulsion of the President from office. Its motive is not punishment, not vengeance, but the public safety. Nothing less could justify the ponderous proceeding. It will be for the criminal courts to award the punishment due to his offences. The Senate considers only how the safety of the people, which is the supreme law, can be best preserved; and to this end the ordinary rule of evidence is reversed. If on any point you entertain doubts, the benefit of those doubts must be given to your country; and this is the supreme law. When tried on indictment in the crim-

[1] Burke's Works, Vol. XI. p. 63.

inal courts, Andrew Johnson may justly claim the benefit of your doubts; but at the bar of the Senate, on the question of expulsion from office, his vindication must be in every respect and on each charge beyond a doubt. He must show that his longer continuance in office is not inconsistent with the public safety, —

> "Or at least so prove it,
> That the probation bear no hinge nor loop
> To hang a doubt on."

Anything short of this is to trifle with the Republic and its transcendent fortunes.

It is by insisting upon doubts that the apologists of the President, at the bar and in the Senate, seek to save him. For myself, I see none such; but assuming that they exist, then should they be marshalled for our country. This is not a criminal trial, where the rule prevails, Better the escape of many guilty than that one innocent should suffer. This rule, so proper in its place, is not applicable to a proceeding for expulsion from office; and who will undertake to say that any claim of office can be set against the public safety?

In this just rule of evidence I find little more than time-honored maxims of jurisprudence, requiring interpretation always in favor of Liberty. Early in the Common Law we were told that he is to be adjudged impious and cruel who does not favor Liberty: *Impius et crudelis judicandus est qui Libertati non favet.*[1] Blackstone, whose personal sympathies were with power, is constrained to confess that "the law is always ready to catch at anything in favor of Liberty."[2] But Liberty and all else are contained in the public safety;

[1] Fortescue, De Laudibus Legum Angliæ, Cap. XLII.
[2] Commentaries, Vol. II. p. 94.

they depend on the rescue of the country from a Presidential usurper. Therefore should we now, in the name of the law, "catch at anything" to save the Republic.

2. There is another rule of evidence, which, though of common acceptance in the courts, has peculiar value in this case, where it must exercise a decisive influence. It is this: Courts will take judicial cognizance of certain matters without any special proof on the trial. Some of these are of general knowledge, and others are within the special knowledge of the court. Among these, according to express decision, are the frame of government, and the public officers administering it; the accession of the Chief Executive; the sitting of Congress, and its usual course of proceeding; the customary course of travel; the ebbs and flows of the tide; *also whatever ought to be generally known within the limits of the jurisdiction, including the history of the country.* Besides these matters of general knowledge, a court will take notice of its own records, the conduct of its own officers, and whatever passes in its own presence or under its own eyes. For all this I cite no authority; it is superfluous. I add a single illustration from the great English commentator: "If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges, without any further proof or examination." [1]

If this be the rule of courts, *a fortiori* it must be the rule of the Senate on impeachments; for we have seen, that, when sitting for this purpose, the Senate enjoys a latitude of its own. Its object is the Public

[1] Blackstone, Commentaries, Vol. IV. p. 286.

Safety; and therefore no aid for the arrival at truth can be rejected, no gate can be closed. But here is a gate opened by the sages of the law, and standing open always, to the end that justice may not fail.

Applying this rule, it will be seen at once how it brings before the Senate, without any further evidence, a long catalogue of crime, affecting the character of the President beyond all possibility of defence, and serving to explain the later acts on which the impeachment is founded. It was in this Chamber, in the face of the Senate and the ministers of foreign powers, and surrounded by the gaze of thronged galleries, that Andrew Johnson exhibited himself in beastly intoxication while he took his oath of office as Vice-President; and all that he has done since is of record here. Much of it appears on our Journals. The rest is in authentic documents published by the order of the Senate. Never was record more complete.

Here in the Senate we know officially how he made himself the attorney of Slavery, the usurper of legislative power, the violator of law, the patron of rebels, the helping hand of rebellion, the kicker from office of good citizens, the open bung-hole of the Treasury, the architect of the "Whiskey Ring," the stumbling-block to all good laws by wanton vetoes and then by criminal hindrances: all these things are known here beyond question. To the apologists of the President, who set up the quibbling objection that they are not alleged in the Articles of Impeachment, I reply, that, even if excluded on this account from judgment, they may be treated as evidence. They are the reservoir from which to draw, in determining the true character of the later acts for which the President is

arraigned, and especially the *intent* by which he was animated. If these latter were alone, without connection with transgressions of the past, they would have remained unnoticed, impeachment would not have been ordered. It is because they are a prolongation of that wickedness under which the country has so long suffered, and spring from the same bloody fountain, that they are now presented for judgment. They are not alone; nor can they be faithfully considered without drawing upon the past. The story of the god Thor in Scandinavian mythology is revived, whose drinking-horn could not be drained by the strongest quaffer, for it communicated with the vast and inexhaustible ocean. Andrew Johnson is our god Thor, and these latter acts for which he stands impeached are the drinking-horn whose depths are unfathomable.

OUTLINE OF TRANSGRESSIONS.

From this review, showing how this proceeding is political in character, before a political body, and with a political judgment, being expulsion from office and nothing more,— then how the transgressions of the President, in protracted line, are embraced under "impeachable offences," — then how the form of procedure is liberated from ordinary technicalities of law,— and, lastly, how unquestionable rules of evidence open the gates to overwhelming testimony, — I pass to the consideration of the testimony, and how the present impeachment became a necessity. I have already called it one of the last great battles with Slavery. See now how the battle began.

Slavery in all its pretensions is a defiance of law;

for it can have no law in its support. Whoso becomes its representative must act accordingly; and this is the transcendent crime of Andrew Johnson. For the sake of Slavery, and to uphold its original supporters in their endeavors to continue this wrong under another name, he has set at defiance the National Constitution and the laws of the land; and he has accompanied this unquestionable usurpation by brutalities and indecencies in office without precedent, unless we go back to the Roman emperor fiddling or the French monarch dancing among his minions. This usurpation, with its brutalities and indecencies, became manifest as long ago as the winter of 1866, when, being President, and bound by oath of office to preserve, protect, and defend the Constitution, and to take care that the laws are faithfully executed, he assumed legislative powers in the reconstruction of the Rebel States, and, in carrying forward this usurpation, nullified an Act of Congress, intended as the corner-stone of Reconstruction, by virtue of which Rebels are excluded from office under the National Government, and thereafter, in vindication of this misconduct, uttered a scandalous speech, in which he openly charged members of Congress with being assassins, and mentioned some by name. Plainly he should have been impeached and expelled at that early day. The case against him was complete. That great patriot of English history, Lord Somers, has likened impeachment to Goliath's sword hanging in the Temple, to be taken down only when occasion required;[1] but if ever there was occasion for its promptest vengeance, it was then. Had there been no failure at that

[1] Speech on the Lords' Amendments to the Bill for the Regulation of Trials in Cases of Treason, December 11, 1691: Hansard's Parliamentary History, Vol. V. col. 678.

time, we should be now by two years nearer to restoration of all kinds, whether political or financial. So strong is my conviction of the fatal remissness of the impeaching body, that I think the Senate would do a duty in strict harmony with its constitutional place in the Government, and the analogies of judicial tribunals so often adduced, if it reprimanded the House of Representatives for this delay. Of course the Senate could not originate impeachment. It could not take down the sword of Goliath. It must wait on the House, as the court waits on the grand jury. But this waiting has cost the country more than can be told.

Meanwhile the President proceeded in transgression. There is nothing of usurpation he has not attempted. Beginning with assumption of all power in the Rebel States, he has shrunk from nothing in maintenance of this unparalleled assumption. This is a plain statement of fact. Timid at first, he grew bolder and bolder. He saw too well that his attempt to substitute himself for Congress in the work of Reconstruction was sheer usurpation, and therefore, by his Secretary of State, did not hesitate to announce that "it must be distinctly understood that the restoration will be *subject to the decision of Congress.*"[1] On two separate occasions, in July and September, 1865, he confessed the power of Congress over the subject; but when Congress came together in December, the confessor of Congressional power found that he alone had this great prerogative. According to his new-fangled theory, Congress had nothing to do but admit the States with governments instituted through his will

[1] Secretary Seward to Provisional Governor Marvin of Florida, September 12, 1865: McPherson's Political History of the United States during Reconstruction, p. 25.

alone. It is difficult to measure the vastness of this usurpation, involving as it did a general nullification. Strafford was not bolder, when, speaking for Charles the First, he boasted that "the King's little finger was heavier than the loins of the Law";[1] but these words helped the proud minister to the scaffold. No monarch, no despot, no sultan, could claim more than an American President; for he claimed all. By his edict alone governments were organized, taxes levied, and even the franchises of the citizen determined.

Had this assumption of power been incidental, for the exigency of the moment, as under pressure of war, and especially to serve human rights, to which before his elevation the President had professed such vociferous devotion, it might have been pardoned. It would have passed into the chapter of unauthorized acts which a patriot people had condoned. But it was the opposite in every particular. Beginning and continuing in usurpation, it was hateful beyond pardon, because it sacrificed Unionists, white and black, and was in the interest of the Rebellion, and of Rebels who had been in arms against their country.

More than one person was appointed provisional governor who could not take the oath of office required by Act of Congress. Other persons in the same predicament were appointed in the revenue service. The effect of these appointments was disastrous. They were in the nature of notice to Rebels everywhere, that participation in the Rebellion was no bar to office. If one of their number could be appointed governor, if another could be appointed to a confidential position in the Treasury Department, there was nobody on the long

[1] Howell's State Trials, Vol. III. col. 1421.

list of blood who might not look for preferment. And thus all offices, from governor to constable, were handed over to disloyal scramble. Rebels crawled forth from their retreats. Men who had hardly ventured to expect life were candidates for office, and the Rebellion became strong again. The change was felt in all gradations of government, in States, counties, towns, and villages. Rebels found themselves in places of trust, while true-hearted Unionists, who had watched the coming of our flag and should have enjoyed its protecting power, were driven into hiding-places. All this was under the auspices of Andrew Johnson. It was he who animated the wicked crew. He was at the head of the work. Loyalty was persecuted. White and black, whose only offence was that they had been true to country, were insulted, abused, murdered. There was no safety for the loyal man except within the flash of our bayonets. The story is as authentic as hideous. More than two thousand murders have been reported in Texas alone since the surrender of Kirby Smith. In other States there was like carnival. Property, person, life, were all in jeopardy. Acts were done to "make a holiday in Hell." At New Orleans was a fearful massacre, worse, considering the age and place, than that of St. Bartholomew, which darkens a century of France, or that of Glencoe, which has printed an ineffaceable stain upon one of the greatest reigns of English history. All this is directly traced to Andrew Johnson. The words of bitterness uttered at another time are justified, while Fire, Famine, and Slaughter shriek forth, —

> "He let me loose, and cried, Halloo!
> To him alone the praise is due." [1]

[1] Coleridge.

ACCUMULATION OF IMPEACHABLE OFFENCES.

THIS is nothing but the outline, derived from historic sources *which the Senate on this occasion is bound to recognize.* Other acts fall within the picture. The officers he appointed in defiance of law were paid also in the same defiance. Millions of property were turned over without consideration to railroad companies, whose special recommendation was participation in the Rebellion. The Freedmen's Bureau, that sacred charity of the Republic, was despoiled of its possessions for the sake of Rebels, to whom their forfeited estates were given back after they had been vested by law in the United States. The proceeds of captured and abandoned property, lodged under law in the National Treasury, were ravished from their place of deposit and sacrificed. Rebels were allowed to fill the antechambers of the Executive Mansion and to enter into the counsels. The pardoning power was prostituted, and pardons were issued in lots to suit Rebels, thus grossly abusing that trust whose discreet exercise is so essential to the administration of justice. The powers of the Senate over appointments were trifled with and disregarded by reappointing persons already rejected, and by refusing to communicate the names of others appointed during the recess. The veto power, conferred by the National Constitution as a remedy for ill-considered legislation, was turned by him into a weapon of offence against Congress, and into an instrument to beat down the just opposition which his usurpation had aroused. The power of removal, so sparingly exercised by patriot Presidents, was seized as an engine of tyranny, and openly employed to maintain his wicked

purposes, by the sacrifice of good citizens who would not be his tools. Incompetent and dishonest creatures, recommended only by their echoes to his voice, were appointed to office, especially in the collection of the internal revenue, through whom a new organization, known as the "Whiskey Ring," has been able to prevail over the Government, and to rob the Treasury of millions, at the cost of tax-paying citizens, whose burdens are thus increased. Laws enacted by Congress for the benefit of the colored race, including that great statute for the establishment of the Freedmen's Bureau, and that other great statute for the establishment of Civil Rights, were first attacked by Presidential veto, and, when finally passed by requisite majority over the veto, were treated by him as little better than dead letter, while he boldly attempted to arrest a Constitutional Amendment by which the rights of citizens and the national debt were placed under the guaranty of irrepealable law. During these successive assumptions, usurpations, and tyrannies, utterly without precedent in our history, this deeply guilty man ventured upon public speeches, each an offence to good morals, where, lost to all shame, he appealed in coarse words to the coarse passions of the coarsest people, scattering firebrands of sedition, inflaming anew the rebel spirit, insulting good citizens, and, with regard to office-holders, announcing, in his own characteristic phrase, that he would "kick them out," — the whole succession of speeches being, from their brutalities and indecencies, in the nature of a "criminal exposure of his person," indictable at Common Law, for which no judgment can be too severe. Even this revolting transgression has additional aggravation, when it is considered, that, through these

utterances, the cause of justice was imperilled, and the accursed demon of civil feud lashed again into vengeful fury.

All these things, from beginning to end, are plain facts, recorded in our annals, and known to all. And it is further recorded in our annals and known to all, that, through these enormities, — any one of which is ample for condemnation, while all together present an aggregation of crime, — untold calamities have been brought upon our country, disturbing business and finance, diminishing the national revenues, postponing specie payments, dishonoring the Declaration of Independence in its grandest truths, arresting the restoration of the Rebel States, reviving the dying Rebellion, and, instead of that peace and reconciliation so much longed for, sowing strife and wrong, whose natural fruit is violence and blood.

OPEN DEFIANCE OF CONGRESS.

For all these, or any one of them, Andrew Johnson should have been impeached and expelled from office. The case required a statement only, not an argument. Unhappily this was not done. As a petty substitute for the judgment which should have been pronounced, and as a bridle on Presidential tyranny in "kicking out of office," Congress enacted a law known as the Tenure-of-Office Act, passed March 2, 1867, over his veto, by two thirds of both Houses.[1] And to prepare the way for impeachment, by removing scruples of technicality, its violation was expressly declared a high misdemeanor.

[1] Statutes at Large, Vol. XIV. pp. 430–432.

The President began at once to chafe under its restraint. Recognizing the Act, and following its terms, he first suspended Mr. Stanton from office, and then, in anticipation of his restoration by the Senate, made the attempt to win General Grant into surrender of the department, so as to oust Mr. Stanton and render restoration by the Senate ineffectual. Meanwhile Sheridan in Louisiana, Pope in Alabama, and Sickles in South Carolina, who, as military commanders, were carrying into the pacification of these States the energies so brilliantly displayed in the war, were pursued by the same vindictive spirit. They were removed by the President, and Rebellion throughout that whole region clapped its hands. This was done in the exercise of his power as Commander-in-Chief. At last, in unappeased rage, he openly violated the Tenure-of-Office Act, so as to bring himself under its judgment, by defiant attempt to remove Mr. Stanton from the War Department without the consent of the Senate, and the appointment of Lorenzo Thomas, Adjutant-General of the United States, as Secretary of War *ad interim*.

IMPEACHMENT AT LAST.

THE Grand Inquest of the nation, after sleeping on so many enormities, was awakened by this open defiance. The gauntlet was flung into its very chamber, and there it lay on the floor. The President, who had already claimed everything for the Executive with impunity, now rushed into conflict with Congress on the very ground selected in advance by the latter. The field was narrow, but sufficient. There was but one thing for the House of Representatives to do. Andrew John-

son must be impeached, or the Tenure-of-Office Act would become a dead letter, while his tyranny would receive a letter of license, and impeachment as a remedy for wrong-doing would be blotted from the Constitution.

Accordingly it was resolved that the offender, whose crimes had so long escaped judgment, should be impeached. Once entered upon this work, the House of Representatives, after setting forth the removal of Mr. Stanton and the appointment of General Thomas in violation of law and Constitution, proceeded further to charge him in different forms with conspiracy wrongfully to obtain possession of the War Department; also with attempt to corrupt General Emory, and induce him to violate an Act of Congress; also with scandalous speeches, such as no President could be justified in making; concluding with a general Article setting forth attempts on his part to prevent the execution of certain Acts of Congress.

Such is a simple narrative, which brings us to the Articles of Impeachment. Nothing I have said thus far is superfluous; for it shows the origin of this proceeding, and illustrates its moving cause. The Articles themselves are narrow, if not technical; but they are filled and broadened by the transgressions of the past, all of which enter into the present offences. The whole is an unbroken series, with a common life. As well separate the Siamese twins as separate the offences charged from that succession of antecedent crimes with which they are linked, any one of which is enough for judgment. The present springs from the past, and can be truly seen only in its light, which, in this case, is nothing less than "darkness visible."

ARTICLES OF IMPEACHMENT.

In entering upon the discussion of the Articles of Impeachment, I confess my regret that so great a cause, on which so much depends, should be presented on such narrow ground, although I cannot doubt that the whole past must be taken into consideration in determining the character of the acts alleged. If there has been a violation of law and Constitution, the apologists of the President then insist that all was done with good intentions. Here it is enough, if we point to the past, which thus becomes part of the case. But of this hereafter. It is unnecessary for me to take time in setting forth the Articles. The abstract is enough. They will naturally come under review before the close of the inquiry.

Of the transactions embraced by the Articles, the removal of Mr. Stanton has unquestionably attracted most attention, although I cannot doubt that the scandalous harangues are as justly worthy of condemnation. But the former has been made the pivot of the impeachment, — so much so that the whole case seems to revolve on this transaction. Therefore I shall not err, if, following the Articles, I put this foremost.

This transaction may be brought to the touchstone of the National Constitution, and also of the Tenure-of-Office Act. But since the allegation of violation of this Act has been so conspicuous, and this Act may be regarded as a Congressional interpretation of the power of removals under the National Constitution, I begin with the questions arising under it.

TENURE-OF-OFFICE ACT.

THE general object of the Tenure-of-Office Act was to protect civil officers from removal without the advice and consent of the Senate; and it was made in express terms applicable to "every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate." To this provision, so broad in character, was appended a proviso: —

"*Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and the Attorney-General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed and for one month thereafter, subject to removal by and with the advice and consent of the Senate."[1]

As this general protection from removal without the advice and consent of the Senate might be productive of embarrassment during the recess of the Senate, it was further provided, in a second section, that, during such recess, any person, except judges of the United States courts, may be suspended from office by the President on reasons assigned, which it is made his duty to report to the Senate within twenty days after its next meeting, and if the Senate concurs, then the President may remove the officer and appoint a successor; but if the Senate does not concur, then the suspended officer shall forthwith resume his functions.

On this statute two questions arise: first, as to its constitutionality, and, secondly, as to its application to Mr. Stanton, so as to protect him from removal without the advice and consent of the Senate.

[1] Section 1.

It is impossible not to confess in advance that both have been already practically settled. The statute was passed over the veto of the President by two thirds of both Houses, who thus solemnly united in declaring its constitutionality. Then came the suspension of Mr. Stanton, and his restoration to office by a triumphant vote of the Senate, being no less than thirty-five to six, — thus establishing not only the constitutionality of the statute, but also its protecting application to Mr. Stanton. And then came the resolution of the Senate, adopted, after protracted debate, on the 21st February, by a vote of twenty-eight to six, declaring, that, under the Constitution and laws of the United States, the President has no power to remove the Secretary of War and to designate any other officer to perform the duties of that office *ad interim;* thus for the third time affirming the constitutionality of the statute, and for the second time its protecting application to Mr. Stanton. There is no instance in our history where there has been such a succession of votes, with such large majorities, declaring the conclusions of the Senate, and fixing them beyond recall. "Thrice is he armed that hath his quarrel just"; but the Tenure-of-Office Act is armed *thrice* by the votes of the Senate. The apologists of the President seem to say of these solemn votes, "Thrice the brinded cat hath mewed"; but such a threefold record cannot be treated with levity.

The question of the constitutionality of this statute complicates itself with the power of removal under the National Constitution; but I shall not consider the latter question at this stage. It will naturally present itself when we consider the power of removal under the

National Constitution, which has been claimed by the President. For the present I assume the constitutionality of the statute.

ITS APPLICATION TO MR. STANTON.

I COME at once to the question of the application of the statute to Mr. Stanton, so as to protect him against removal without the consent of the Senate. And here I doubt if any question would have arisen but for the hasty words of the Senator from Ohio [Mr. SHERMAN], so often quoted in this proceeding.

Unquestionably the Senator from Ohio, when the report of the Conference Committee of the two Houses was under discussion, stated that the statute did not protect Mr. Stanton in his office; but this was the individual opinion of this eminent Senator, and nothing more. On hearing it, I cried from my seat, "The Senator must speak for himself"; for I held the opposite opinion. It was clear to my mind that the statute was intended to protect Mr. Stanton, and that it did protect him. The Senator from Oregon [Mr. WILLIAMS], who was Chairman of the Conference Committee and conducted its deliberations, informs us that there was no suggestion in committee that the statute did not protect all of the President's Cabinet, including, of course, Mr. Stanton. The debates in the House of Representatives are the same way. Without holding the scales to weigh any such conflicting opinions, I rest on the received rule of law, that they cannot be taken into account in determining the meaning of the statute. And here I quote the judgment of the Supreme Court of the United States, pronounced by Chief Justice Taney: —

"In expounding this law, *the judgment of the Court cannot in any degree be influenced by the construction placed upon it by individual members of Congress in the debate which took place on its passage*, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both Houses, and the only mode in which that will is spoken is in the Act itself; and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, *and looking, if necessary, to the public history of the times in which it was passed.*"[1]

It is obvious to all acquainted with a legislative body that the rule thus authoritatively declared is the only one that could be safely applied. The Senate, in construing the present statute, must follow this rule. Therefore I repair to the statute, stopping for a moment to glance at the public history of the times, in order to understand its object.

We have seen how the President, in carrying forward his usurpation in the interest of the Rebellion, trifled with the Senate in regard to appointments, and abused the traditional power of removal, openly threatening good citizens in office that he would "kick them out," and filling all vacancies, from high to low, with creatures whose first promise was to sustain his barbarous policy. I do not stop to portray this outrage, constituting an impeachable offence, according to the declared opinion of Mr. Madison,[2] one of the strongest advocates of the Presidential power of removal. Congress, instead of adopting the remedy suggested by this father of the Constitution, and expelling the President

[1] Aldridge *v.* Williams, 3 Howard, R., 24.

[2] See, *ante*, p. 147.

by process of impeachment, attempted to wrest from him the power he was abusing. For this purpose the Tenure-of-Office Act was passed. It was deemed advisable to include the Cabinet officers within its protection; but, considering the intimate relations between them and the President, a proviso was appended, securing to the latter the right of choosing them in the first instance. Its object was, where the President finds himself, on accession to office, confronted by a hostile Senate, to assure this right of choice, without obliging him to keep the Cabinet of his predecessor; and accordingly it says to him, "Choose your own Cabinet, but expect to abide by your choice, unless you can obtain the consent of the Senate to a change."

Any other conclusion is flat absurdity. It begins by misconstruing the operative words of the proviso, that the Cabinet officers "shall hold their offices respectively for and during the term of the President by whom they may have been appointed." On the face there is no ambiguity here. Only by going outside can any be found, and this disappears on a brief inquiry. At the date of the statute Andrew Johnson had been in office nearly two years. Some of his Cabinet were originally appointed by President Lincoln; others had been formally appointed by himself. But all were there equally by his approval and consent. One may do an act himself, or make it his own by ratifying it, when done by another. In law it is equally his act. Andrew Johnson did not originally appoint Mr. Stanton, Mr. Seward, or Mr. Welles, but he adopted their appointments; so that at the passage of the statute they stood on the same footing as if originally appointed by him. Practically, and in the sense of the statute, they were ap-

pointed by him. They were a Cabinet of his own choice, just as much as the Cabinet of his successor, duly appointed, will be of his own choice. If the statute compels the latter, as it clearly does, to abide by his choice, it is unreasonable to suppose that it is not equally obligatory on Andrew Johnson. Otherwise there is special immunity for the President whose misconduct rendered it necessary, and Congress is exhibited as legislating for some future unknown President, and not for Andrew Johnson, already too well known.

Even the Presidential apologists do not question that the members of the Cabinet commissioned by Andrew Johnson are protected by the statute. How grossly unreasonable to suppose that Congress intended to make such a distinction among his Cabinet as to protect those whose support of his usurpation had gained the seats they enjoyed, while it exposed to his caprice a great citizen whose faithful services during the war had won the gratitude of his country, whose continuance in office was regarded as an assurance of public safety, and whose attempted removal has been felt as a national calamity! Clearly, then, it was the intention of the statute to protect the whole Cabinet, whether originally appointed by Andrew Johnson, or originally appointed by his predecessor and continued by him.

I have no hesitation in saying that no other conclusion is possible without violence to the statute. I cannot forget, that, while we are permitted "to open the law upon doubts," we are solemnly warned "not to open doubts upon the law."[1] It is Lord Bacon who

[1] Bacon, Upon the Statute of Uses, Introductory Discourse: Works, ed. Spedding, (Boston, 1864,) Vol. XIV. p. 285.

gives us this rule, whose obvious meaning is, that, where doubts do not exist, they should not be invented. It is only by this forbidden course that any question can be raised. If we look at the statute in its simplicity, its twofold object is apparent, — first, to prohibit removals, and, secondly, to limit certain terms of service. The prohibition to remove plainly applies to all; the limitation of service applies only to members of the Cabinet. I agree with the excellent Senator from Iowa [Mr. HARLAN], that this analysis removes all ambiguity. The pretension that any one of the Cabinet was left to the unchecked power of the President is irreconcilable with the concluding words of the proviso, which declare that they shall be "subject to removal by and with the advice and consent of the Senate," — thus expressly excluding the prerogative of the President.

Let us push this inquiry still further, by looking more particularly at the statute reduced to a skeleton, so that we may see its bones.

1. *Every person holding any civil office*, by and with the advice and consent of the Senate, is entitled to hold such office until a successor is appointed.

2. If members of the Cabinet, *then during the term of the President by whom they have been appointed*, and one month thereafter, unless sooner removed by consent of the Senate.

Mr. Stanton obviously falls within the general class, "every person holding any civil office"; and he is entitled to the full benefit of the provision for their benefit.

As obviously he falls within the sub-class, members of the Cabinet.

Here his rights are equally clear. It is in the discussions under this head that the ingenuity of lawyers has found amplest play, mainly turning upon what is meant by "term" in the statute. I glance for a moment at some of these theories.

1. One pretension is, that, the "term" having expired with the life of President Lincoln, Mr. Stanton is retroactively legislated out of office on the 15th May, 1865. As this is a penal statute, this construction makes it *ex post facto*, and therefore unconstitutional. It also makes Congress enact the absurdity that Mr. Stanton had for two years been holding office illegally; whereas he had been holding under the clearest legal title, which could no more be altered by legislation than black could be made white. A construction rendering the statute at once unconstitutional and absurd must be rejected.

2. The quibble that would exclude Mr. Stanton from the protection of the statute, because he was appointed during the first "term" of President Lincoln, and the statute does not speak of "terms," is hardly worthy of notice. It leads to the same absurd results as follow from the first supposition, enhanced by increasing the retroactive effect.

3. Assuming that the statute does not terminate Mr. Stanton's right a month after President Lincoln's death, it is insisted that it must take effect at the earliest possible moment, and therefore on its passage. From this it follows that Mr. Stanton has been illegally in office since the 2d of March, 1867, and that both he and the President have been guilty of a violation of law, the former in exercising the duties of an office to which he had no right, and the latter for appointing him, or

continuing him in office, without consent of the Senate, in violation of the Constitution and the statute in question. This is another absurdity to be rejected.

Assuming, as is easy, that it is President Lincoln's "term," we have the better theory, that it did not expire with his life, but continues until the 4th of March, 1869, in which event Mr. Stanton is clearly entitled to hold until a month thereafter. This construction is entirely reasonable, and in harmony with the Constitution, and the legislation under it. I confess that it is one to which I have often inclined.

This brings me back to the construction with which I began, and I find Andrew Johnson the President who appointed Mr. Stanton. To make this simple, it is only necessary to read "chosen" for "appointed" in the statute,— or, if you please, consider the continuance of Mr. Stanton in office, with the concurrence of the President, as a practical appointment, or equivalent thereto. Clearly Mr. Stanton was in office, when the statute passed, from the "choice" of the President. Otherwise he would have been removed. His continuance was like another commission. This carries out the intention of the framers of the statute, violates no sound canon of construction, and is entirely reasonable in every respect. Or, if preferred, we may consider the "term" that of President Lincoln, and then Mr. Stanton would be protected in office until one month after the 4th of March next. But whether the "term" be of Andrew Johnson or President Lincoln, he is equally protected.

Great efforts have been made to show that Mr. Stanton does not come within the special protection of the proviso, without considering the irresistible consequence that he is then within the general protection of the stat-

ute, being "a person holding a civil office." Turn him out of the proviso and he falls into the statute, unless you are as imaginative as one of the apologists, who placed him in a sort of intermediate limbo, like a lost spirit floating in space, as in one of Flaxman's Illustrations of Dante. But the imagination of this conception cannot make us insensible to its surpassing absurdity. It is utterly unreasonable, and every construction must be rejected which is inconsistent with common sense.

SUSPENSION OF MR. STANTON RECOGNIZED HIM AS PROTECTED BY THE STATUTE.

HERE I might close this part of the case; but there is another illustration. In suspending Mr. Stanton from office, as long ago as August, the President himself recognized that he was protected by the statute. The facts are familiar. The President, in formal words, undertook to say that the suspension was by virtue of the Constitution; but this was a dishonest pretext, in harmony with so much in his career. Whatever he may say, his acts speak louder than his words. In notice of the suspension to the Secretary of the Treasury, and then again in a message to the Senate assigning his reasons for the suspension, both being according to requirements of the statute, he testified, that, in his judgment at that time, Mr. Stanton came within its protection. If not, why thus elaborately comply with its requirements? Why the notice to the Secretary of the Treasury? Why the message to the Senate? All this was novel and without example. Why write to General Grant of "being sustained" by the Senate? Approval or disapproval of

the Senate could make no difference in the exercise of the power he now sets up. Approval could not confirm the suspension; disapproval could not restore the suspended Secretary of War. In fine, why suspend at all? Why exercise the power of suspension, when the President sets up the power of removal? If Mr. Stanton was unfit for office and a thorn in his side, why not remove him at once? Why resort to this long and untried experiment merely to remove at last? There is but one answer. Beyond all question the President thought Mr. Stanton protected by the statute, and sought to remove him according to its provisions, beginning, therefore, with his suspension. Failing in this, he undertook to remove him in contravention of the statute, relying in justification on his pretension to judge of its constitutionality, or the pusillanimity of Congress, or something else "to turn up," which should render justification unnecessary.

Clearly the suspension was made under the Tenure-of-Office Act, and can be justified in no other way. From this conclusion the following dilemma results: If Mr. Stanton was within the statute, by what right was he removed? If he was not, by what right was he suspended? The President may choose his horn. Either will be sufficient to convict.

I should not proceed further under this head but for the new device which makes its appearance under the auspices of the Senator from Maine [Mr. FESSENDEN], who tells us, that, "whether Mr. Stanton came under the first section of the statute or not, the President had a clear right to suspend him under the second." Thus a statute intended as a bridle on the President gives the power to suspend Mr. Stanton, but fails to give him any

protection. This statement would seem enough. The invention of the Senator is not less fallacious than the pretext of the President. It is a device well calculated to help the President and to hurt Mr. Stanton, with those who regard devices more than the reason of the statute and its spirit.

Study the statute in its reason and its spirit, and you cannot fail to see that the second section was intended merely as a pendant to the first, and was meant to apply to the cases included in the first, and none other. It was a sort of safety-valve, or contrivance to guard against possible evils from bad men who could not be removed during the recess of the Senate. There was no reason to suspend a person who could be removed. It is absurd to suppose that a President would resort to a dilatory and roundabout suspension, when the short cut of removal was open to him. Construing the statute by this plain reason, its second section must have precisely the same sphere of operation as the first. By the letter, Mr. Stanton falls within both; by the intention, it is the same. It is only by applying to the first section his own idea of the intention, and by availing himself of the letter of the second, that the Senator is able to limit the one and to enlarge the other, so as to exclude Mr. Stanton from the protection of the statute, and to include him in the part allowing suspensions. Applying either letter or spirit consistently, the case is plain.

I turn for the present from the Tenure-of-Office Act, insisting that Mr. Stanton is within its protection, and, being so, that his removal was, under the circumstances, a high misdemeanor, aggravated by its defiant purpose and the long series of transgressions which preceded

it, all showing a criminal intent. The apologies of the President will be considered hereafter.

SUBSTITUTION OF ADJUTANT-GENERAL THOMAS AD INTERIM.

THE case of Mr. Stanton has two branches: first, his removal, and, secondly, the substitution of Adjutant-General Thomas as Secretary of War *ad interim*. As the former was contrary to positive statute, so also was the latter without support in any Act of Congress. For the present I content myself with the latter proposition, without opening the question of Presidential powers under the National Constitution.

The offender rests his case on the Act of Congress of February 13, 1795, which empowers the President, "in case of *vacancy* in the office of Secretary of State, Secretary of the Treasury, or of the Secretary of the Department of War, ... whereby they cannot perform the duties of their said respective offices, ... to authorize any person or persons, at his discretion, to perform the duties of the said respective offices, until a successor be appointed, or such vacancy be filled"; and the supply of the vacancy is limited to six months.[1] Under this early statute the President defends himself by insisting that there was a "vacancy," when, in fact, there was none. All this is in that unfailing spirit of prerogative which is his guide. Here is assumption of power. In fact, Mr. Stanton was at his office, quietly discharging its duties, when the President assumed that there was a "vacancy," and forthwith sent the valiant Adjutant-General to enter upon possession. Assumption and

[1] Statutes at Large, Vol. I. p. 415.

commission were on a par. There is nothing in any law of the land to sanction either. Each testifies against the offender.

The hardihood of this proceeding becomes more apparent, when it is understood that this very statute of 1795, on which the offender relies, was repealed by the statute of February 20, 1863,[1] passed in our own day, and freshly remembered. The latter statute, by necessary implication, obliterated the former. Such is the obvious intention, and I do not hesitate to say that any other construction leads into those absurdities which constitute the staple of the Presidential apologists. The object of Congress was to provide a substitute for previous statutes, restricting the number of vacancies which might be filled and the persons who might fill them. And this was done.

As by the National Constitution all appointments must be with the advice and consent of the Senate, therefore any legislation in derogation thereof must be construed strictly; but the President insists that it shall be extended, even in face of the constitutional requirement. To such pretensions is he driven! The exception recognized by the National Constitution is only where a vacancy occurs during the recess of the Senate, when the President is authorized to appoint until he can obtain the consent of the Senate, and no longer. Obviously, cases may arise where sudden accident vacates the office, or where the incumbent is temporarily disabled. Here was the occasion for an *ad interim* appointment, and the repealing statute, embodying the whole law of the subject, was intended for such cases,—securing to the President time to se-

[1] Statutes at Large, Vol. XII. p. 656.

lect a successor, and also power to provide for a temporary disability. Such is the underlying principle, which it is for us to apply. The expiration of a commission, which ordinary care can foresee, is not one of the sudden emergencies for which provision must be made; and assuming that vacancies by removal were contemplated, which must be denied, it is plain that the delay required for the examination of the case would give time to select a successor, while removal without cause would never be made until a successor was ready.

Look now at the actual facts, and you will see how little they come within the reason of an *ad interim* appointment. Evidently the President had resolved to remove Mr. Stanton last summer. Months elapsed, leaving his purpose without consummation till February. All the intervening time was his to select a successor, being a period longer than the longest fixed for the duration of an *ad interim* appointment by the very statutes under which he professed to act. In conversation with General Sherman, a month before the removal, he showed that he was then looking for a successor *ad interim*. Why not a permanent successor? It took him only a day to find Mr. Ewing. If, as there is reason to suppose, Mr. Ewing was already selected when Adjutant-General Thomas was pushed forward, why appoint the latter at all? Why not, in the usual way, transmit Mr. Ewing's name as the successor? For the excellent reason, that the offender knew the Senate would not confirm him, and that therefore Mr. Stanton would remain in office; whereas through an *ad interim* appointment he might obtain possession of the War Department, which was

his end and aim. The *ad interim* appointment of General Thomas was, therefore, an attempt to obtain possession of an office without the consent of the Senate, precisely because the offender knew that he could not obtain that consent. And all this was under pretext of an Act of Congress alike in letter and spirit inapplicable to the case.

Thus does it appear, that, while Mr. Stanton was removed in violation of the Tenure-of-Office Act, Adjutant-General Thomas was appointed Secretary of War *ad interim* in equal derogation of the Acts of Congress regulating the subject.

REMOVAL AND SUBSTITUTION AD INTERIM A VIOLATION OF THE CONSTITUTION.

It remains to consider if the removal and substitution were not each in violation of the National Constitution. The case is new, for never until now could it arise. Assuming that the Tenure-of-Office Act does not protect Mr. Stanton, who is thus left afloat in the limbo between the body of the Act and the proviso, then the President is remitted to his prerogative under the National Constitution, and he must be judged accordingly, independently of statute. Finding the power of removal there, he may be justified; but not finding it there, he must bear the consequences. And here the Tenure-of-Office Act furnishes a living and practical construction of the National Constitution from which there is no appeal.

From the Constitution it appears that the power of appointment is vested in the President and Senate conjointly, and that nothing is said of the power of re-

moval, except in case of impeachment, when it is made by the Senate. Therefore the power of removal is not express, but implied only, and must exist, if at all, as a necessary consequence of the power to appoint. But in whom? According to a familiar rule, the power which makes can unmake. Unless this rule be rejected, the power of removal must exist in the President and Senate conjointly; nor is there anything unreasonable in this conclusion. Removal can always be effected during the session of the Senate by the nomination and confirmation of a successor, while provision can be made for the recess by an Act of Congress. This conclusion would be irresistible, were the Senate always in session; but since it is not, and since cases may arise during the recess requiring the immediate exercise of this power, it has been argued that at least during the recess it must be in the President alone. From this position there has been a jump to the next, and it has been insisted, that, since, for the sake of public convenience, the power of removal exists in the President, he is at liberty to exercise it either during the recess or the session itself. Here is an obvious extension of the conclusion, which the premises do not warrant. The reason failing, the conclusion must fail. *Cessante ratione legis, cessat ipsa lex.* Especially must this be the case under the National Constitution. A power founded on implied necessity must fail when the necessity does not exist. The implication cannot be carried beyond the reason. Therefore the power of removal during the recess, doubtful at best, unless sanctioned by Act of Congress, cannot be extended to justify the exercise of that power while the Senate is in session, ready to act conjointly with the President.

Against this natural conclusion, we have the assumption that a contrary construction of the National Constitution was established after debate in 1789. I avoid all details with regard to this debate, cited and considered so often. I content myself by asking if at best it was anything but a Congressional construction of the National Constitution, and, as such, subject to be set aside by another voice from the same quarter. It was, moreover, a Congressional construction adopted during the administration of Washington, whose personal character must have influenced opinion largely; and it prevailed in the House of Representatives only after earnest debate by a majority of twelve, and in the Senate only by the casting vote of the Vice-President, John Adams, who, from position as well as principle, was not inclined to shear the President of any prerogative. Once adopted, and no strong necessity for a change occurring, it was allowed to go unaltered, but not unquestioned. Jurists like Kent and Story, statesmen like Webster, Clay, Calhoun, and Benton, recorded themselves adversely, and it was twice reversed by vote of the Senate. This was in 1835 and again in 1836, when a bill passed the Senate, introduced by Mr. Calhoun and sustained by the ablest statesmen of the time, practically denying the power of the President.[1] The Tenure-of-Office Act was heralded in 1863 by a statute making the Comptroller of the Currency removable "by and with the advice and consent of the Senate,"[2] — thus, in

[1] Bill to repeal the 1st and 2d Sections of an Act to limit the Term of Office of certain Officers therein named. See Congressional Debates, 23d Cong. 2d Sess., 1834–35, col. 361, 418–491, 495–539, 552–571, 576. Ibid., 24th Cong. 1st Sess., 1835–36, col. 52, 367.

[2] Act of February 25, 1863, Sec. 1: Statutes at Large, Vol. XII. pp. 665, 666.

this individual case, asserting for the Senate a check on the President; and then in 1866, by a more important measure, being the provision in the Army Appropriation Act,[1] that "no officer in the military or naval service shall in time of peace be dismissed from service, except upon and in pursuance of the sentence of a court-martial," — thus putting another check on the President. Finally, this Congressional construction, born of a casting vote, and questioned ever since, has been overruled by another Congressional construction, twice adopted in both Houses, first by large majorities on the original passage of the Tenure-of-Office Act, and then by a vote of two thirds on the final passage of the same Act over the veto of the President, — and then again adopted by more than two thirds of the Senate, when the latter condemned the removal of Mr. Stanton: and all this in the light of experience, after ample debate, and with all the consequences before them. Such a Congressional construction must have a controlling influence, and the fact that it reversed the practice of eighty years and overcame the disposition to stand on the ancient ways would seem to increase rather than diminish its weight.

Now mark the consequences. Originally, in 1789, there was a Congressional construction which in effect made the National Constitution read, —

"The President *shall have* the power of removal."

For the next eighty years all removals were made under this construction. The Tenure-of-Office Act was a new Congressional construction, overruling the first, and entitled to equal, if not superior weight. By virtue of this

[1] Sec. 5: Statutes at Large, Vol. XIV. p. 92.

Congressional construction the National Constitution now reads, —

"The President *shall not have* the power of removal."

It follows, then, that in removing Mr. Stanton the President violated the National Constitution as now construed.

The dilemma is this: If the President can remove Mr. Stanton during the session of the Senate, without any power by statute, it is only by virtue of a prerogative vested in him by the National Constitution, which must necessarily override the Tenure-of-Office Act, as an unconstitutional effort to abridge it. If, on the other hand, this Act is constitutional, the prerogative of removal is not in the President, and he violated the National Constitution when he assumed to exercise it.

The Tenure-of-Office Act cannot be treated otherwise than as constitutional, — certainly not in the Senate, where some among the apologists of the President voted for it. Therefore the prerogative of removal is not in the President. The long practice which grew up under a mere reading of the National Constitution has been declared erroneous. To this extent the National Constitution has been amended, and it is as absurd to plead the practice under the first reading, in order to justify an offence under the second, as to plead the existence of Slavery before the Constitutional Amendment, in order to justify this monstrosity now.

Thus must we conclude that the offender has violated not only the Tenure-of-Office Act, but also the National Constitution; that, even assuming Mr. Stanton unprotected by the statute, the case is not ended; that this statute, if construed so as to exclude him,

cannot be rejected as a Congressional construction of the National Constitution; and that, under this Congressional construction, which in value is second only to a Constitutional Amendment, the prerogative of removal without the consent of the Senate does not belong to the President. Of course the power of suspension under the National Constitution, which is only an incident of the larger pretension, must fall also. Therefore, in the defiant removal of Mr. Stanton, and also in the pretended suspension under the National Constitution with which the transaction began, the President violated the Constitution, and was guilty of an impeachable offence.

And so, too, we must conclude, that, in the substitution of Lorenzo Thomas as Secretary of War *ad interim*, the offender violated not only the Acts of Congress for the supply of vacancies, but also the National Constitution. Knowing that he could not obtain possession of the office with the consent of the Senate, he sought to accomplish this purpose without that consent. Thus, under color of a statute, he practically set the National Constitution at defiance. Mark here the inconsistency. He violates the Tenure-of-Office Act, alleging that it is against the National Constitution, whose champion he professes to be, and then takes advantage of the Acts of Congress for the supply of vacancies to set aside this Constitution in one of its most important requirements; for all which he is justly charged with an impeachable offence.

All this seems clear. Any other conclusion gives to the President the power under the National Constitution to vacate all national offices, and leaves the Republic the wretched victim of tyranny, with a ruler

who is not even a constitutional monarch, but a king above all laws. It was solemnly alleged in the Charge against Charles the First of England, that, "being admitted King of England, and therein trusted with a limited power *to govern by and according to the laws of the land, and* NOT OTHERWISE," he nevertheless undertook "*to rule according to his will*, and to overthrow the rights and liberties of the people."[1] These very words now declare the crime of Andrew Johnson.

THE APOLOGIES.

HERE I might close; but the offender has found apologists, who plead his cause at the bar and in the Senate. The apologies are a strange compound, enlarging rather than diminishing the offences proved. There is, first, the Apology of Good Intentions; next, the Apology of making a case for the Supreme Court, being the Moot-Court Apology; and then, the Apology that the President may sit in judgment on the laws, and determine whether they shall be executed, which I call the Apology of Prerogative. Following these is a swarm of technicalities, devices, and quibbles, utterly unworthy of the Senate, and to be reprobated by all who love justice.

THE APOLOGY OF GOOD INTENTIONS.

I BEGIN with the Apology of Good Intentions. In the light of all that has occurred, with the volume of history open before us, with the records of the Senate in our hands, and with the evidence at the bar not

[1] Howell's State Trials, Vol. IV. col. 1070.

utterly forgotten, it is inconceivable that such an apology can be put forward. While making it, the apologists should be veiled, so that the derisive smile on their faces may not be observed by the Senate, to whose simplicity it is addressed. It is hard to treat this apology; but it belongs to the case, and therefore I deal with it.

A mere technical violation of law, with no evil consequences, and without any claim of title, is followed by nominal damages only. If a person, without permission, steps on a field of grass belonging to another, he is a trespasser, and the law furnishes a familiar proceeding against him; but if he has done this accidentally, and without any real damage, it would be hard to pursue him, unless assertion of the title were thought important. But if the trespasser is an old offender, who from the beginning has broken fences, ruined trees, and trampled down the garden, and now defiantly comes upon the field of grass, insisting upon absolute ownership, then it is vain to set up the apology that very little damage is done. The antecedent transgressions, ending in claim of title, enter into the present trespass, and make it a question whether the rightful owner or the trespasser shall hold possession. Here the rightful owner is the people of the United States, and the trespasser is Andrew Johnson. Therefore in the name of the people is he impeached.

This simple illustration opens the whole case. Mere technical violation of statute or of Constitution, without antecedents and without consequents, would not justify impeachment. All of us can recall such, even in the administration of Abraham Lincoln; and I cannot doubt, that, since this proceeding began, the Chief Justice vio-

lated the National Constitution when he undertook to give a casting vote, not being a member of the Senate. These were accidents, besides being innocuous. From violation of statute or of Constitution the law ordinarily infers evil intent, and, where such a case is submitted to judgment, it throws upon the violator the burden of exculpation. He must show that his conduct was innocent, — in other words, that it was without evil intent, or claim of title. In the present cause we have the denial of evil intent, with a claim of title.

The question of intent raised by the offender cannot be considered narrowly. This is a trial of impeachment, and not a criminal case in a county court. It is a proceeding for expulsion from office on account of political offences, and not a suit at law. When the offender sets up good intentions, he challenges inquisition, according to the latitude of such proceeding. The whole past is unrolled by himself, and he cannot prevent the Senate from seeing it. By a commanding rule of evidence it is all before us without further proof. You cannot shut it out; you cannot refuse to look at it. And yet we have been seriously told that we must shut out from sight everything but the technical trespass. It only remains, that, imitating the ostrich, we should thrust our heads into the sand, and, not seeing danger, foolishly imagine it does not exist. This may do at *Nisi Prius;* it will not do in the Senate.

To such extent has this ostrich pretension been carried, that we were solemnly admonished at the bar, and the paradox has found voice in the Senate, that we must judge the acts of Andrew Johnson "as if committed by George Washington." Here is the paradox in length and breadth. I deny it. I scout it. On the contrary,

I say that we must judge all these acts as if committed by Andrew Johnson, and nobody else. In other words, we must see things as they are. As well insist that an act of guilt should be judged as the mistake of innocence. As well argue that the stab of the assassin should be treated as the cut of the surgeon.

To the Apology of Good Intentions I oppose all that long unbroken series of transgressions, each with a voice to drown every pretext of innocence. I would not repeat what I have already said, but, in presence of this apology, it is my duty to remind the Senate how the career of this offender is compounded of falsehood and usurpation; how, beginning with promises to make treason odious, he soon installed it in authority; how, from declared sympathy with Unionists, white and black, he changed to be their persecutor; how in him are continued the worst elements of Slavery, an insensibility to right and a passion for power; how, in this spirit, he usurped great prerogatives not belonging to him; how, in the maintenance of this usurpation, he stuck at nothing; how he violated law; how he abused the pardoning power; how he prostituted the appointing power; how he wielded the power of removal to maintain his tyranny; how he sacrificed the Freedmen's Bureau, and lifted up the Whiskey Ring; how he patronized massacre and bloodshed, and gave a license to the Ku-Klux-Klan; how, in madness, he entered into conflict with Congress, contesting its rightful power over the reconstruction of the Rebel States, and, when Congress would not succumb to his usurpation, how he thwarted and vilified it, expectorating foul-mouthed utterances which are a disgrace to human nature; how he so far triumphed in his wickedness that in nine States no Union

man is safe and no murderer of a Union man can be punished; and, lastly, — for time fails, though not the long list of transgressions, — how he conspired against the patriot Secretary of War, because he found in that adamantine character an obstacle to his revolutionary career. And now, in the face of this terrible and indisputable record, entering into and filling this impeachment, I hear a voice saying that we must judge the acts in question "as if committed by George Washington." The statement of this pretension is enough. I hand it over to the contempt it deserves.

THE MOOT-COURT APOLOGY.

KINDRED to the Apology of Good Intentions, or, perhaps, a rib out of its side, is the Moot-Court Apology, which pretends that the President, in removing Mr. Stanton, only wished to make a case for the Supreme Court, and thus submit to this tribunal the constitutionality of the Tenure-of-Office Act.

By this pretension the Supreme Court is converted into a moot-court to sit in judgment on Acts of Congress, and the President becomes what, in the time of Charles the Second, Lord Keeper Guilford said a good lawyer must be, "a put-case."[1] Even assuming, against evidence, that such was his purpose, it is hard to treat it without reprobation. The Supreme Court is not arbiter of Acts of Congress. If this pretension ever found favor, it was from the partisans of Slavery and State Rights, who, assured of the sympathy of the Court, sought in this way to complete an unjust triumph. The power claimed is tribunitial in character, being noth-

[1] Life, by Roger North, (London, 1826,) Vol. I. p. 20.

ing less than a veto. Its nearest parallel in history is in the ancient Justicia of Aragon, who could set aside even royal ordinances as unconstitutional. The National Constitution leaves no doubt as to the proper functions of the Supreme Court. It may hear and determine "all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made under their authority"; but this is all. Its business is to decide "cases," — not to sit in judgment on Acts of Congress and issue its tribunitial veto. If a "case" arises where a statute is said to clash with the National Constitution, it must be decided as any other case of conflict of laws. But nothing within the just powers of the Court can touch an Act of Congress, except incidentally, and then its judgment is binding only on the parties. The incidental reason assigned — as, for instance, that a statute is unconstitutional — does not bind anybody, not even the parties or the Court itself. Of course such incidental reason cannot bind Congress.

On the evidence it is clear enough that the President had no honest purpose to make a case for the Supreme Court. He may have talked about it, but he was never in earnest. When asked by General Sherman "why lawyers could not make a case," he said, in reply, "that it was found impossible, or a case could not be made up." And so at each stage we find him practically discarding the idea. He issues the order of removal. Mr. Stanton disobeys. Here was exactly his opportunity. Instead of making the case by commencing the proper process, he tells Adjutant-General Thomas to "go on and take possession of the office"; and then, putting an end to this whole pretension of a case for

the Court, he proceeds to treat the latter in every respect, whether of law or fact, as Secretary, welcomes him to his Cabinet, invites him to present the business of his Department, and, so far from taking advantage of the opportunity he had professed to desire, denies its existence. How could he inquire by what authority Mr. Stanton assumed to hold the office of Secretary of War, when he denied, in fact, that he was holding it?

Look a little further, and the reason of this indifference becomes apparent. The old writ of *Quo Warranto* was the only process by which a case could be made, and this only at the suit of the Attorney-General. Had the President made an order of removal, the Secretary would have been compelled to hold only by virtue of the law and the Constitution. In answer to the writ he would have pleaded this protection, and the Court must have decided the validity of the plea. Meanwhile he would have remained in office. Had he left, the process would have failed, and there was none other by which he could raise the question. The decision of the Supreme Court in *Wallace* v. *Anderson*[1] would prevent resort to a *Quo Warranto* on his part, while the earlier case of *Marbury* v. *Madison*[2] would shut him out from a *Mandamus*. The apologists have not suggested any other remedy. It is clear, therefore, that Mr. Stanton's possession of the office was a *sine qua non* to a case in the Supreme Court, and that this could be only by *Quo Warranto*. The local attorney employed by the President testifies that in such a case judgment could not be reached within a year. This was enough to render it impracticable;

[1] 5 Wheaton, R., 291, seqq. [2] 1 Cranch, R., 137, seqq.

for, if commenced, it would leave the hated Secretary at his post for the remainder of the Presidential term. During the pendency of the proceeding Mr. Stanton would continue legitimate possessor of the office. Therefore the commencement of a case would defeat the Presidential passion for instant removal. True to his passion, he removed the Secretary, well knowing that in this way he prevented a case for the Court.

Against this conclusion, where all the testimony is harmonized, we have certain fruitless conversations with his Cabinet, and an attempt to raise the question on *Habeas Corpus* after the arrest of Adjutant-General Thomas. Conversations, whose exclusion has given a handle to the apologists, which they do not fail to use, only show that the President made this question a subject of talk, and that, in the end, it became apparent that he could not make a case so as to remove Mr. Stanton during his term, and as this was his darling object, the whole idea was abandoned. The arrest of Adjutant-General Thomas seemed for a moment to furnish another chance; but it is enough to say of the futile attempt at that time, that it was not only after the removal of Mr. Stanton, but after impeachment had been voted by the House.

Had the President been in earnest, it was very easy for him to make a case by proceeding against a simple postmaster; but this did not suit him. He was in earnest only to remove Mr. Stanton.

Nothing is clearer than that this Moot-Court Apology is a wretched pretension and afterthought. It is the subterfuge of a criminal to cover up his crime,—as if a surgeon had committed murder, and then set up the apology that it was an experiment in science.

THE APOLOGY OF PREROGATIVE.

THEN comes the Apology of Prerogative, being nothing less than the intolerable pretension that the President can sit in judgment on Acts of Congress, and, in his discretion, refuse to execute them. This apology is in the nature of a claim of right. Let it be established, and, instead of a government of laws, which is the glory of a republic, we have only the government of a single man. Here is the one-man power with a vengeance.

Of course, if the President can sit in judgment on the Tenure-of-Office Act, and set it aside as unconstitutional, there is no Act of Congress he may not treat in the same way. He may set aside the whole succession of statutes for the government of the army; and his interview with General Emory attests his willingness to venture in that direction. In the spirit of oppression which seems to govern him, he may set aside the great statute for the establishment of civil rights without distinction of color. But why confine myself to instances? The whole statute-book will be subject to his prerogative. Vain the requirement of the National Constitution, that the President "shall take care that the laws be faithfully executed." Vain that other requirement, that a bill approved by two thirds of both Houses over his veto "shall become a law." His veto is perpetual; nor is it limited to any special enactment. It is as broad as the whole recorded legislation of the Republic. There is nothing it cannot hurry into that maelstrom ingulfing all.

The President considers the statute unconstitutional, say the apologists. A mistake in judgment on such a

question is not an impeachable offence, add the apologists. To which I reply, that it is not for mistake in judgment, but for usurpation in undertaking to exercise his judgment at all on such a question, that he is impeached; in other words, he is impeached for undertaking to set aside a statute. Whether the statute is constitutional or not is immaterial. The President, after the statute has become a law, is not the person to decide.

Ingenuity seeks to perplex the question by putting impossible cases. For instance, suppose Congress should have lost its wits so far as to enact, in direct terms, that the President should not be commander-in-chief of the army and navy, or that he should not have the power to grant pardons; and suppose, still further, that Congress, in defiance of positive inhibition, should undertake to create "titles of nobility"; must not the President treat such enactments as unconstitutional? Of course he must; but such instances do not help the prerogative now claimed. Every such enactment would be on its face unconstitutional. It would be an act of unreasoning madness, which President as well as Court must disregard as if plain nonsense. Its unconstitutionality would be like an axiom, not to be questioned. No argument or authority is needed. It proves itself. Nor would the duty of disobedience be less obligatory, even if the enactment were sanctioned by the Supreme Court: and it is not more violent for me to suppose it sanctioned by the Supreme Court than for the apologists to suppose it sanctioned by Congress. The enactment would be a self-evident monstrosity, and therefore to be disobeyed, as if one of the Ten Commandments were reversed so as to read, "Thou

shalt kill." Such extreme cases serve no purpose. The National Constitution is the supreme law of the land, and the people will not allow its axiomatic requirements to be set aside. An illustration outside the limits of reason is of no value.

In the cases supposed, the unconstitutionality of the enactment is axiomatic, excluding opinion or argument. It is matter of fact, and not matter of opinion. When the case is one on which there are two sides or two different views, it is then within the domain of argument. It is in no sense axiomatic. It is no longer matter of fact, but matter of opinion. When submitted to the Supreme Court, it is for their "opinion." Without occupying time with refinements, I content myself with asserting that the judgment of the Court must be matter of opinion. One of the apologists has asserted that such a judgment is matter of fact, and, generally, that the constitutionality of a statute is matter of fact. I assert the contrary. When a bench of judges stands five to four, shall we say that the majority declare a "fact," and the minority declare an "opinion"?

Assuming, then, what I think will not be denied, that the constitutionality of a statute is matter of opinion, the question occurs, What opinion shall be regarded for the time as decisive? Clearly the opinion of Congress must control all executive officers, from the lowest to the President. According to a venerable maxim of jurisprudence, all public acts are presumed to be correct, — *Omnia rite acta præsumuntur.* A statute must be presumed constitutional, unless on its face the contrary; and no decision of any court is required in its favor. It is the law of the land, and must be obeyed

as such. The maxim which presumes constitutionality is just as binding as the analogous maxim of the Criminal Law which presumes innocence. The President, reversing all this, presumes the statute unconstitutional, and acts accordingly. In the name of Prerogative he sets it aside.

The apologists have been driven to invoke the authority of President Jackson, who asserted for himself the power to judge the constitutionality of an Act of Congress which in the course of legislation required his approval, although the question involved had been already adjudged by the Supreme Court. And he was clearly right. The Court itself would not be bound by its adjudication. How could it constrain another branch of the Government? But Andrew Jackson never put forth the pretension that it was within his prerogative to nullify a statute which had been passed over his veto in the way prescribed by the National Constitution. He was courageous, but there was no such unconstitutional audacity in his life.

The apologists also summon to their aid those great instances where conscientious citizens have refused obedience to unjust laws. Such was the case of Hampden, who set an example for all time in refusing to pay ship-money. Such also was the case of many in our own country, who spurned the Fugitive Slave Bill. These exalted characters, on their conscience, refused to obey the law, and suffered accordingly. The early Christians were required by imperial mandate to strew grain on the altar of Jove. Though good citizens, they preferred to be martyrs. Such a refusal can be no apology for a President, who, in the name of prerogative, breaks the great oath to see that the laws are faith-

fully executed. Rather do these instances, in their moral grandeur, rebuke the offender.

Here I turn from this Apology of Prerogative, regretting that I cannot say more to unfold its destructive character. If anything could aggravate the transgressions of Andrew Johnson, stretching in long line from the beginning of his administration, it would be the claim of right he sets up, under which the slenderest violation of law becomes a high crime and misdemeanor, to be pursued and judged by an indignant people. The supremacy of the laws must be preserved, or the liberties of all will suffer.

TECHNICALITIES AND QUIBBLES.

I NOW come upon that swarm of technicalities, devices, quirks, and quibbles, which from the beginning have infested this proceeding. It is hard to speak of such things without showing a contempt not entirely parliamentary. To say that they are petty and miserable is not enough. To say that they are utterly unworthy of this historic occasion is to treat them politely. They are nothing but parasitic insects, "vermin gendered in a lion's mane," — so nimble and numerous, that, to deal with them as they skip about, one must have the patience of the Italian peasant, who catches and kills, one by one, the diminutive animals that infest his person. The public has not forgotten the exhibition of "industrious fleas." The Senate has witnessed the kindred exhibition of "industrious quibbles."

I can give specimens only, and out of many I take one which can never be forgotten. It is found in the Opinion of the Senator from West Virginia [Mr. VAN

WINKLE], which, from beginning to end, treats this impeachment as if it were a prosecution for sheep-stealing in the police-court of Wheeling, and brings to the defence the unhesitating resources of a well-trained criminal lawyer. This famous Opinion, which is without parallel in the annals of jurisprudence, must always be admired as the marvel of technicality in a proceeding where technicality should not intrude. It stands by itself, solitary in originality. Others have been technical also, but the Senator from West Virginia is nothing else. Travelling from point to point, or rather seeing point after point skip before him, at last he lights upon one of the largest dimensions, which he boldly seizes and presents to the Senate.

According to him, there is no allegation in the Articles that the order for the removal of Mr. Stanton was actually delivered to him, and, this being so, the Senator declares, that, "if there is evidence of a delivery to be found in the proceedings, it cannot be applicable to this Article, in which there is no charge or averment." And this is gravely uttered on this transcendent occasion, when an indignant people has risen to demand judgment of a criminal ruler. The Article alleges that the order was "unlawfully issued," and nobody doubts that its delivery was proved; but this is not enough, according to the Senator. I challenge history for another instance of equal absurdity in legal pretension. The case approaching it the closest is the famous extravagance of the Crown lawyer in the British Parliament, who, in reply to the argument of our fathers that they could not be taxed without representation, bravely insisted that they were represented, and sustained himself by declaring, that, under the

Colonial charters, the lands were held in common socage as "of the manor of Greenwich in Kent," and, as Greenwich was represented in Parliament, therefore the Colonies were represented there.[1] The pretension was perfect in form, but essentially absurd. The Senator from West Virginia outdoes even this climax of technicality. Other generations, as they read this great trial, with its accumulation of transgressions ending in the removal of Mr. Stanton, will note with wonder that a principal reason assigned for the verdict of Not Guilty was the failure of the Articles to allege that the order for removal was actually received, although there was a distinct allegation that it was "unlawfully issued," with evidence that it was received, and no human being, not even the technical Senator, imagined that it was not. But how inconsistent with the Law of Impeachment already set forth,[2] which seeks substantial justice, and will not be arrested by any nice requirements! Lord Mansfield did not hesitate to condemn certain objections as "disgraceful subtilties." What would he have said to the Senator from West Virginia?

There is another invention, which has in its support some of the ablest of the apologists, like the Senator from Iowa [Mr. GRIMES], the Senator from Maine [Mr. FESSENDEN], and the Senator from Illinois [Mr. TRUMBULL]. It is said, that, as Mr. Stanton did not go out, therefore there was no removal, and therefore Andrew Johnson is not guilty. If the authority of names could change the unreal into the real,

[1] Speech of Sir James Marriott, Admiralty Judge, in the House of Commons, March 15, 1782: Hansard's Parliamentary History, Vol. XXII. col. 1184.

[2] *Ante*, pp. 148, seqq.

then this pretension might have weight. It is impossible that anything so essentially frivolous should be recognized in this proceeding. Such are the shifts of a cause to be defended only by shifts! Clearly the offence of the President was in the order "unlawfully issued," and this was complete at the moment of its delivery. So far as depended upon him, Mr. Stanton was removed. This is the way in which the country saw the transaction, and the way also in which it will be recorded by history.

But these same apologists, with curious inconsistency, when they come to consider the appointment of Adjutant-General Thomas, insist that there was vacancy in law, called by the Senator from Maine *legal* vacancy. But such vacancy could be only because there had been removal in law. There is no escape from this consequence. If there was removal in law, and there was no right to make it, the President was guilty of misdemeanor in law, and must take the consequences.

It would be unprofitable to follow these inventions further. From these know all. In the face of Presidential pretensions inconsistent with constitutional liberty, the apologists have contributed their efforts to save the criminal by subtilties which can secure his acquittal in form only, as by a flaw in an indictment; and they have done this, knowing that he will be left in power to assert his prerogative, and that his acquittal will be a new letter of license. Nothing the skill of the lawyer could supply has been wanting. This learned profession lends to the criminal all the arts in which it excels, giving all to him and forgetting the Republic. Every doubt, every scruple, every tech-

nicality, every subtilty, every quibble, is arrayed on his side, when, by every rule of reason and patriotism, all should be arrayed on the side of our country. The Public Safety, which is the supreme law, is now imperilled. Are we not told by Blackstone that "the law is always ready to catch at anything in favor of Liberty"?[1] But these apologists catch at anything to save a usurper. In the early days of the Common Law there were technicalities in abundance, but they were for the maintenance of justice. On such was founded that extensive *ac etiam* jurisdiction of the King's Bench, which gives occasion for the elegant Commentator to remark, that, however startling these may be at first to the student, "he will find them, upon further consideration, to be highly beneficial and useful."[2] These generous fictions for the sake of justice must not be confounded with the devices by which justice is defeated.

The trick of the apologists has been, by stringent application of technical rules, to shut out all except offences charged, and then, when stress was laid upon these offences, to cry out that at most they were only technical, and too trifling for impeachment. To satisfy lawyers, the House weakly declined to act on the bloody transgressions of two years, but sought to provide against the future. Like the Roman ambassadors, they traced a line about the offender, which he was not to pass except at peril. This was the line of law. At last he passed the line, openly, knowingly, defiantly; and now that he is arraigned, we are told that this plain offence is nothing, only a little technicality. One of the counsel at the bar, [Mr. GROESBECK,] in a speech

[1] Commentaries, Vol. II. p. 94. [2] Ibid., Vol. III. p. 43.

which showed how much feeling and talent could be given to a wrong side, exclaimed:—

"It almost shocks me to think that the President of the United States is to be dragged out of his office on these miserable little questions whether he could make an *ad interim* appointment for a single day."

Only by excluding the whole context and all its antecedents could the question be reduced to this trivial form; and yet, even thus reduced, it involved nothing less than the supremacy of the laws.

I know not how such a question can be called "trifling." Often a great cause is presented on a narrow issue: as when English liberty was argued on the claim of ship-money, which was a tax of a few shillings only. Behind this question, called trifling by the kingly apologists of that day, loftily stood the great cause of the People against Prerogative, being the same now pending before the Senate. That other cause, on which at a later day hung the destinies of this continent, was presented on a narrower issue still. There was a tax of threepence a pound on tea, which our fathers refused to pay. But behind this question, so trifling to the apologists of prerogative, as behind that of ship-money, stood loftily the same great cause. The first cost Charles the First his head. The second cost George the Third his colonies. If such a question can be disparaged as of small moment, then have the martyred dead in all times suffered in vain, then was the costly blood lavished for the suppression of our Rebellion an empty sacrifice.

Constantly we are admonished that we must confine ourselves to the Articles. Senators express a pious hor-

ror at looking outside the Articles, and insist upon directing attention to these only. Here the Senator from Maine is very strong. It is "the specific offences charged," and these only, that he sees. He will not look at anything else, although spread upon the record of the Senate, and filling the land with accumulated horrors. Of course such a system of exclusion sacrifices justice, belittles this trial, and forgets that essential latitude of inquiry which belongs to a political proceeding, having for its purpose expulsion from office only, and not punishment. It is easy, by looking at an object through the wrong end of an opera-glass, to find it dwarfed, contracted, and solitary. This is not the way to look at Nature; nor is it the way to look at Andrew Johnson. The great offender should be seen in the light of day, precisely as he is, nor more nor less, with nothing dwarfed, with no limits to the vision, and with all the immense background of thronging transgressions filling the horizon as far as eye can reach. The sight may ache; but how else can justice be done? A Senator who begins by turning these Articles into an inverted opera-glass takes the first step towards judgment of acquittal. Alas that the words of Burke are not true, when, asserting the comprehensive character of impeachment, he denied, that, under it, "they who have no hope at all in the justice of their cause can have any hope that by some subtilties of form, some mode of pleading, by something, in short, different from the merits of the cause, they may prevail."[1] The orator was right in thus indignantly dismissing all questions of pleading and all subtilties of

[1] Speeches of the Managers and Counsel in the Trial of Warren Hastings, ed. Bond, Vol. I. p. 11.

form. This proceeding is of substance, and not of form. It is on the merits only that it can be judged. Anything short of this is the sacrifice of justice.

Such is the case of this enormous criminal. Events belonging to history, enrolled in the records of the Senate, and familiar to the country, are deliberately shut out from view, while we are treated to legal niceties without end. The lawyers have made a painful record. Nothing ever occurred so much calculated to bring the profession into disrepute; for never before has been such a theatre where lawyers were actors. Their peculiarities have been exhibited. Here was a great question of justice, appealing to the highest sentiments, and involving the best interests of the country; but lawyers, instinctive for the dialectics of the profession, forgot everlasting truth, never to be forgotten with impunity. They started at once in full cry, and the quibble became to them what Dr. Johnson says it was to the great dramatist: "He follows it at all adventures; it is sure to lead him out of his way, and sure to ingulf him in the mire. It has some malignant power over his mind, and its fascinations are irresistible. . . . . A quibble is the golden apple for which he will always turn aside from his career, or stoop from his elevation. A quibble, poor and barren as it is, gave him such delight that he was content to purchase it by the sacrifice of reason, propriety, and truth."[1] In this Shakespearean spirit our lawyers have acted. They have pursued quibbles with the ardor of the great dramatist, and even now are chasing them through the Senate Chamber.

Unhappily this is according to history, and our law-

[1] Preface to Shakespeare: Works, (Oxford, 1825,) Vol. V. p. 118.

yers are not among the splendid exceptions. But there is reward for those who stand firm. Who does not reverence the exalted magistrate of France, the Chancellor L'Hospital, who set the great example of rectitude and perfect justice? Who does not honor those lawyers of English history through whose toils Liberty was upheld? There was Selden, so wise and learned; Pym, so grand in statesmanship; Somers, who did so much to establish the best securities of the Constitution. Nor can I forget, at a later day, that greatest advocate, Erskine, who lent to the oppressed his wonderful eloquence; nor Mackintosh and Brougham, who carried into courts that enlarged intelligence and sympathetic nature which the profession of the law could not constrain. These are among the names that have already had their reward, above the artful crowd which in all times has come to the defence of prerogative. It is no new thing that we witness now. The lawyer in other days has been, as we know him, prone to the support of power, and ready with technical reasons. Whichever side he takes, he finds reasons plenty as pins. When free to choose, and not hired, his argument is the reflection of himself. All that he says is his own image. He takes sides on a law point according to his sentiments. Cultured in law, and with aptitude sharpened by its contests, too easily he finds a legal reason for an illegal judgment. Next to an outright mercenary, give me a lawyer to betray a great cause. Forms of law lend themselves to the betrayal. It is impossible to forget that the worst pretensions of prerogative, no matter how colossal, have been shouldered by lawyers. It was they who carried ship-money against the patriot exertions of Hampden; and in our

country it was they who held up Slavery in all its terrible pretensions from beginning to end. What is sometimes called "the legal mind" of Massachusetts, my own honored State, bent before the technical reasoning which justified the unutterable atrocities of the Fugitive Slave Bill, while the Supreme Court of the State adopted the crime from the bench. Alas that it should be so! When will lawyers and judges see that nothing short of justice can stand?

GUILTY ON ALL THE ARTICLES.

After this survey it is easy for me to declare how I shall vote. My duty is to vote, Guilty on all the Articles. If consistent with the rules of the Senate, I should vote, "Guilty of all, and infinitely more."

Not doubting that Mr. Stanton was protected by the Tenure-of-Office Act, and that he was believed to be so by the President, it is clear to me that the charges in the first and second Articles are sustained. These two go together. I have said already, in the course of this Opinion, that the appointment of Adjutant-General Thomas as Secretary of War *ad interim* was without authority of law, and under the circumstances a violation of the National Constitution. Accordingly the third Article is sustained.

Then come what are called the Conspiracy Articles. Here also I am clear. Plainly there was an agreement between the President and Adjutant-General Thomas to obtain possession of the War Department, and prevent Mr. Stanton from continuing in office, and this embraced control of the mails and property belonging to the Department, all of which was contrary

to the Tenure-of-Office Act. Intimidation and threats were certainly used by one of the conspirators, and in the case of conspiracy the acts of one are the acts of all. The evidence that force was intended is considerable, and all this must be interpreted by the general character of the offender, his menacing speeches, and the long series of transgressions preceding the conspiracy. I cannot doubt that the conspiracy was to obtain possession of the War Department, peaceably, if possible, forcibly, if necessary. As such it was violation of law, demanding the judgment of the Senate. This disposes of the fourth, fifth, sixth, and seventh Articles.

The eighth Article charges that Adjutant-General Thomas was appointed to obtain the control of moneys appropriated for the military service and the Department of War. All this would be incident to the control of the War Department. Controlling the latter, he would be able to wield the former. The evidence applicable to the one is also applicable to the other.

The ninth Article opens a different question. This charges a wicked purpose to corrupt General Emory and draw him from his military duty. Not much passed between the President and the General; but it was enough to show the President playing the part of Iago. There was hypocritical profession of regard for the Constitution, while betraying it. Here again his past character explains his purpose beyond reasonable doubt.

Then come the scandalous speeches, proved as set forth in the Articles, so that even the Senator from West Virginia [Mr. VAN WINKLE] must admit that

evidence and pleading concur. Here is no question of form. To my mind this is one of the strongest Articles. On this alone, without anything else, I should deem it my duty to vote for expulsion from office. A young lieutenant, at the bottom of the ladder, if guilty of such things, would be cashiered promptly. A President, at the top of the ladder, with less excuse from the inexperience of early life, and with greater responsibility from the elevation he had reached, should be cashiered promptly also; and this is the object of impeachment. No person capable of such speeches should be allowed to govern this country. It is absurd to tolerate the idea. Besides being degraded, the country cannot be safe in such hands. The speeches are a revelation of himself, not materially different from well-known incidents; but they serve to exhibit him in his true character. They show him unfit for official trust. They were the utterances of a drunken man; and yet it does not appear that he was drunk. Now it is according to precedents of our history that a person disqualified by drunkenness shall be removed from office. This was the case of Pickering in 1804. But a sober man, whose conduct suggests drunkenness, is as bad at least as if he were drunk. Is he not worse? If without the explanation of drunkenness he makes such harangues, I cannot doubt that his unfitness for office becomes more evident, inasmuch as his deplorable condition is natural, and not abnormal. The drunken man has lucid intervals; but where is the assurance of a lucid interval for this perpetual offender? Derangement is with him the normal condition.

It is astonishing to find that these infamous utter-

ances, where ribaldry vies with blasphemy, have received a coat of varnish from the Senator from Maine [Mr. FESSENDEN], who pleads that they were not "official," nor did they "violate the Constitution, or any provision of the Statute or Common Law, either in letter or spirit." In presence of such apologies for revolting indecencies it is hard to preserve proper calmness. Were they not uttered? This is enough. The drunkenness of Andrew Johnson, when he took his oath as Vice-President, was not "official"; but who will say that it was not an impeachable offence? And who will say that these expectorations differ in vileness from that drunkenness? If they did not violate the National Constitution, or any provision of law, common or statute, as is apologetically alleged, I cannot doubt that they violated the spirit of all laws. And then we are further reminded by the apologist of that "freedom of speech" which is a constitutional right; and thus, in the name of a great right, we are to license utterances that shock the moral sense, and are a scandal to human nature. Spirit of John Milton! who pleaded so grandly for this great liberty, but would not allow it to be confounded with license, speak now to save this Republic from the shame of surrender to an insufferable pretension!

The eleventh Article is the most comprehensive. In some respects it is an *omnium gatherum*. In one mass is the substance of other Articles, and something else beside. Here is an allegation of a speech by the President in which he denied that Congress was a Congress, and then, in pursuance of this denial, attempted to prevent the execution of the Tenure-of-Office Act, also of an important clause in the Army Appropriation Act, and also of the Reconstruction Act. Evidence followed,

sustaining completely the compound allegation. The speech was made as set forth. The attempt to prevent the execution of the Tenure-of-Office Act who can question? The attempt to corrupt General Emory is in evidence. The whole history of the country shows how earnest the President has been to arrest the Reconstruction Act, and generally the Congressional scheme of Reconstruction. The removal of Mr. Stanton was to be relieved of an impediment. I accept this Article in gross and in detail. It has been proved in all its parts.

CONCLUSION.

In the judgment which I now deliver I cannot hesitate. To my vision the path is clear as day. Never in history was there a great case more free from all just doubt. If Andrew Johnson is not guilty, then never was a political offender guilty; and if his acquittal is taken as a precedent, never can a political offender be found guilty. The proofs are mountainous. Therefore you are now determining whether impeachment shall continue a beneficent remedy in the National Constitution, or be blotted out forever, and the country handed over to the terrible process of revolution as its sole protection. If the milder process cannot be made effective now, when will it ever be? Under what influences? On what proofs? You wait for something. What? Is it usurpation? You have it before you, open, plain, insolent. Is it abuse of delegated power? That, too, you have in this offender, hardly less broad than the powers he has exercised. Is it violation of law? For more than two years he has set your laws at defiance; and when Congress, by special enactment, strove to con-

strain him, he broke forth in rebellion against the constitutional authority. Perhaps you ask still for something more. Is it a long catalogue of crime, where violence and corruption alternate, while loyal men are sacrificed and the Rebellion is lifted to its feet? That also is here.

The apologists are prone to remind the Senate that they are acting under the obligation of an oath. So are the rest of us, even if we do not ostentatiously declare it. By this oath, which is the same for all, we are sworn to do "impartial justice." It is justice, and this justice must be impartial. There must be no false weights, and no exclusion of proper weights. Therefore I cannot allow the jargon of lawyers on mere questions of form to sway the judgment against justice. Nor can I consent to shut out from view the long list of transgressions explaining and coloring the final act of defiance. To do so is not to render impartial justice, but to depart from this prescribed rule. The oath we have taken is poorly kept, if we forget the Public Safety in devices for the criminal. Above all else, now and forever, is that justice which "holds the scales of right with even hand." In this sacred name, and in the name also of country, that great charity embracing so many other charities, I make this final protest against all questions of form at the expense of the Republic.

Something also is said of the people, now watching our proceedings with patriotic solicitude, and it has been proclaimed that they are wrong to intrude their judgment. I do not think so. This is a political proceeding, which the people are as competent to decide as the Senate. They are the multitudinous jury, coming

from no small vicinage, but from the whole country: for on this impeachment, involving the Public Safety, the vicinage is the whole country. It is they who have sent us here, as their representatives, and in their name, to consult for the common weal. In nothing can we escape their judgment, least of all on a question like that before us. It is a mistake to suppose that the Senate only has heard the evidence. The people have heard it also, day by day, as it was delivered, and have carefully considered the case on its merits, properly dismissing all apologetic subtilties. It is for them to review what has been done. They are above the Senate, and will "rejudge its justice." Thus it has been in other cases. The popular superstition which long surrounded the Supreme Court could not save that eminent tribunal from condemnation, amounting sometimes to execration, when, by an odious judgment, it undertook to uphold Slavery; and down to this day Congress has justly refused to place the bust of the Chief Justice pronouncing this judgment in the hall of the tribunal where he presided so long. His predecessors are all there in marble; no marble of Taney is there. The present trial, like that in the Supreme Court, is a battle with Slavery. Acquittal is another Dred Scott decision, and another chapter in the Barbarism of Slavery. How can Senators, discharging a political function only, expect that the voice of the people will be more tender for them than for a Chief Justice pronouncing judgment from the bench of the Supreme Court, in the exercise of judicial power? His fate we know. Nor learning, nor private virtues, nor venerable years could save him from justice. In the great pillory of history he stands, and there he must stand forever.

The people cannot witness with indifference the abandonment of the great Secretary, who organized their armies against the Rebellion, and then organized victory. Following him gratefully through the trials of the war, they found new occasion for gratitude when he stood out alone against that wickedness which was lifted to power on the pistol of an assassin. During these latter days, while tyrannical prerogative invaded all, he has kept the bridge. When, at a similar crisis of English history, Hampden stood out against the power of the Crown, it is recorded by the contemporary historian, Clarendon, that "he grew the argument of all tongues; every man inquiring who and what he was, that durst at his own charge support the liberty and property of the kingdom, and rescue his country, as he thought, from being made a prey to the Court."[1] Such things are also said with equal force of our Secretary. Nor is it forgotten that the Senate, by two solemn votes of more than two thirds, has twice instructed him to stay at the War Department, the President to the contrary notwithstanding. The people will not easily understand on what principle of Constitution, law, or morals, the Senate can twice instruct the Secretary to stay, and then, by another vote, deliberately surrender him a prey to Presidential tyranny. Talk of a somersault; talk of self-stultification: are not both here? God save me from participation in this disastrous wrong, and may He temper it kindly to our afflicted country!

For myself, I cannot despair of the Republic. It is a life-boat, which wind and wave cannot sink; but it may suffer much and be beaten by storm. All this I

[1] History of the Rebellion, (Oxford, 1826,) Vol. IV. pp. 91, 92.

clearly see before us, if you fail to displace an unfit commander, whose power is a peril and a shame.

Alas for all the evil that must break upon the country, especially in the suffering South, as it goes forth that this bad man is confirmed in the prerogatives he has usurped!

Alas for that peace and reconciliation, the longing of good men, now postponed!

Alas for that security, so important to all, as the only foundation on which to build, politically or financially! This, too, is postponed. How can people found a government, or plant or buy, unless first secure?

Alas for the Republic, degraded as never before, while the Whiskey Ring holds its orgy of corruption, and the Ku-Klux-Klan holds its orgy of blood!

Alas for the hearts of the people, bruised to unutterable sadness, as they witness a cruel tyranny installed once more!

Alas for that race so long oppressed, but at last redeemed from bondage, now plunged back into another hell of torment!

Alas for the fresh graves already beginning to yawn, while violence, armed with your verdict, goes forth, like another Fury, and murder is quickened anew!

Alas for the Unionists, white and black alike, who have trusted to our flag! You offer them a sacrifice to persecutors whose representative is before you for judgment. They are the last in my thoughts, as I pronounce that vote which is too feeble to save them from intolerable wrong and outrage. They are fellow-citizens of a common country, brethren of a common humanity, two commanding titles, both strong against the deed. I send them at this terrible moment the sympathy and fellow-

ship of a heart that suffers with them. So just a cause cannot be lost. Meanwhile, may they find in themselves, and in the goodness of an overruling Providence, that refuge and protection which the Senate refuses to give!

CONSTITUTIONAL RESPONSIBILITY OF SENATORS FOR THEIR VOTES IN CASES OF IMPEACHMENT.

RESOLUTIONS IN THE SENATE, JUNE 3, 1868.

JUNE 3d, Mr. Sumner submitted the following Resolutions, which were read and ordered to be printed.

WHEREAS a pretension has been put forth to the effect that the vote of a Senator on an impeachment is so far different in character from his vote on any other question that the people have no right to criticize or consider it; and whereas such pretension, if not discountenanced, is calculated to impair that freedom of judgment which belongs to the people on all that is done by their representatives: Therefore, in order to remove all doubts on this question, and to declare the constitutional right of the people in cases of impeachment, —

1. *Resolved*, That, even assuming that the Senate is a Court in the exercise of judicial power, Senators cannot claim that their votes are exempt from the judgment of the people; that the Supreme Court, when it has undertaken to act on questions essentially political in character, has not escaped this judgment; that the decisions of this high tribunal in support of Slavery have been openly condemned; that the memorable utterance known as the Dred Scott decision was indignantly denounced

and repudiated, while the Chief Justice who pronounced it became a mark for censure and rebuke; and that plainly the votes of Senators on an impeachment cannot enjoy an immunity from popular judgment which has been denied to the Supreme Court, with Taney as Chief Justice.

2. *Resolved*, That the Senate is not at any time a Court invested with judicial power, but that it is always a Senate with specific functions declared by the Constitution; that, according to express words, "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish," while it is further provided that "the Senate shall have the sole power to try all impeachments," thus positively making a distinction between the judicial power and the power to try impeachments; that the Senate, on an impeachment, does not exercise any portion of the judicial power, but another and different power, exclusively delegated to the Senate, having for its sole object removal from office and disqualification therefor; that, by the terms of the Constitution, there may be, after conviction on impeachment, a further trial and punishment "according to law," thus making a discrimination between a proceeding by impeachment and a proceeding "according to law"; that the proceeding by impeachment is not "according to law," and is not attended by legal punishment, but is of an opposite character, and from beginning to end political, being instituted by a political body on account of political offences, being conducted before another political body having political power only, and ending in a judgment which is political only; and therefore the vote of a Senator on impeachment,

though different in form, is not different in responsibility, from his vote on any other political question; nor can any Senator, on such an occasion, claim immunity from that just accountability which the representative at all times owes to his constituents.

3. *Resolved*, That Senators in all that they do are under the constant obligation of an oath, binding them to the strictest rectitude; that on an impeachment they take a further oath, according to the requirement of the Constitution, which says, Senators, when sitting to try impeachment, "shall be on oath or affirmation"; that this simple requirement was never intended to change the character of the Senate as a political body, and cannot have any such operation; and therefore Senators, whether before or after the supplementary oath, are equally responsible to the people for their votes, — it being the constitutional right of the people at all times to sit in judgment on their representatives.

VALIDITY AND NECESSITY OF FUNDAMENTAL CONDITIONS ON STATES.

SPEECH IN THE SENATE, JUNE 10, 1868.

THE Senate having under consideration the bill to admit the States of North Carolina, South Carolina, Louisiana, Georgia, and Alabama to representation in Congress, Mr. Sumner said: —

MR. PRESIDENT, — What I have to say to-day will be confined to a single topic. I shall speak of *the validity and necessity of fundamental conditions on the admission of States into the body of the Nation,* — passing in review objections founded on the asserted equality of States, and also on a misinterpretation of the power to determine the "qualifications" of electors, and that other power to make "regulations" for the election of certain officers. Here I shall encounter the familiar pretensions of another time, no longer put forth by defiant Slave-Masters, but retailed by conscientious Senators, who think they are supporting the Constitution, when they are only echoing the voice of Slavery.

Fundamental conditions on the admission of States are older than our Constitution; for they appear in the Ordinance for the vast Territory of the Northwest, adopted anterior to the Constitution itself. In that Ordinance there are various conditions, of perpetual obligation, as articles of compact. Among these is the

famous prohibition of Slavery. In the early days of our Nation nobody thought of questioning the validity of these conditions. Scattered efforts were made to carry Slavery into some portions of this region, and unquestionably there were sporadic cases, as in Massachusetts itself; but the Ordinance stood firm and unimpeached.

One assurance of its authority will be found in the historic fact, that in 1820, on the admission of Missouri as a State of the Union, there was a further provision that in all territory of the United States north of 36° 30′ north latitude, "Slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be and is hereby FOREVER *prohibited*." [1] This was the famous Missouri Compromise. Missouri was admitted as a State without any restriction of Slavery, but all the outlying territory west and north was subjected to this condition *forever*. It will be observed that the condition was in no respect temporary, but that it was "forever," — thus outlasting any territorial government, and constituting a fundamental law, irrepealable through all time. Surely this condition, perpetual in form, would not have been introduced, had it been supposed to be inoperative, — had it been regarded as a sham, and not a reality. This statute, therefore, testifies to the judgment of Congress at that time.

It was only at a later day, and at the demand of Slavery, that the validity of the great Ordinance of Freedom was called in question. Mr. Webster, in his memorable debate with Mr. Hayne in 1830, vindicated this measure in language worthy of the cause and of

[1] Act of March 6, 1820: Statutes at Large, Vol. III. p. 548.

himself, giving to it a palm among the laws by which civilization has been advanced, and asserting its enduring character: —

"We are accustomed, Sir, to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the Ordinance of 1787. . . . . It fixed forever the character of the population in the vast regions northwest of the Ohio, by excluding from them involuntary servitude. It impressed on the soil itself, while it was yet a wilderness, an incapacity to sustain any other than freemen. *It laid the interdict against personal servitude in original compact, not only deeper than all local law, but deeper also than all local constitutions.*"[1]

Words of greater beauty and power cannot be found anywhere in the writings or speeches of our American orator. It would be difficult to declare the perpetual character of this original interdict more completely. The language is as picturesque as truthful. Deeper than all local law, deeper than all local constitutions, is this fundamental law; and such is its essential quality, that the soil which it protects cannot sustain any other than freemen. Of such a law the orator naturally proceeded to say: —

"We see its consequences at this moment; and we shall never cease to see them, perhaps, while the Ohio shall flow. *It was a great and salutary measure of prevention.*"[2]

In these last words the value of such a law is declared. It is for *prevention*, which is an essential object of all law. In this case it is the more important, as the evil to be prevented is the most comprehensive of all.

[1] Works, Vol. III. pp. 263, 264. [2] Ibid., p. 264.

Therefore, on the authority of Mr. Webster, in harmony with reason also, do I say, that this original condition was not only perpetual in character, but beneficent also. It was beneficence in perpetuity.

Mr. Chase, in his admirable argument before the Supreme Court of the United States, in the *Vanzandt* case, is hardly behind Mr. Webster in homage to this Ordinance, or in a sense of its binding character. In his opinion it is a compact of perpetual obligation: —

"I know not that history records a sublimer act than this. The United American States, having just brought their perilous struggle for freedom and independence to a successful issue, proceeded to declare the terms and conditions on which their vacant territory might be settled and organized into States; and these terms were, not tribute, not render of service, not subordination of any kind, but *the perpetual maintenance of the genuine principles of American Liberty, declared to be incompatible with Slavery;* and that these principles might be inviolably maintained, they were made *the articles of a solemn covenant* between the original States, then the proprietors of the territory and responsible for its future destiny, and the people and the States who were to occupy it. Every settler within the territory, by the very act of settlement, became a party to this *compact, bound by its perpetual obligations,* and entitled to the full benefit of its excellent provisions for himself and his posterity. No subsequent act of the original States could affect it, without his consent. *No act of his, nor of the people of the territory, nor of the States established within it, could affect it, without the consent of the original States.*" [1]

According to these words, which I am sure would not be disowned by the present Chief Justice of the

[1] Argument in the Case of Jones *v.* Vanzandt, pp. 62, 63.

United States, the Ordinance is a sublime act, having for its object nothing less than *the perpetual maintenance of the genuine principles of American Liberty.* In form it is a compact, unalterable except by the consent of the parties, and therefore *forever.*

If anything in our history is settled by original authority, supported by tradition and time, it is the binding character of the Ordinance for the Government of the Northwest Territory. Nobody presumed to call it in question, until at last Slavery flung down its challenge to everything that was settled for Freedom. The great Ordinance, with its prohibition of Slavery, was not left unassailed.

All this makes a strange, eventful passage of history. The enlightened civilization of the age was beginning to be felt against Slavery, when its representatives turned madly round to confront the angel of light. The madness showed itself by degrees. Point by point it made itself manifest in Congress. The Slave-Masters forgot morals, history, and the Constitution. Their manifold pretensions resolved themselves into three, in which the others were absorbed: first, that Slavery, instead of an evil to be removed, was a blessing to be preserved; secondly, that the right of petition could not be exercised against Slavery; thirdly, that, in all that concerns Slavery, State Rights were everything, while National Rights were nothing. These three pretensions entered into Congress, like so many devils, and possessed it. The first broke forth in eulogies of Slavery, and even in blandishments for the Slave-Trade. The second broke forth in the "Atherton Gag," under which the honest, earnest petitions from the national heart against Slavery, even in the District of

Columbia, were tabled without reference, and the great Right of Petition, promised by the Constitution, became a dead letter. The third, beginning with the denial of the power of the Nation to affix upon new States the perpetual condition of Human Rights, broke forth in the denial of the power of the Nation over Slavery in the Territories or anywhere else, even within the national jurisdiction. These three pretensions all had a common origin, and one was as offensive and unreasonable as another. The praise of Slavery and the repudiation of the Right of Petition by the enraged Slave-Masters were not worse than the pretension of State Rights against the power of the Nation to prohibit Slavery in the national jurisdiction, or to affix righteous conditions upon new States.

The first two pretensions have disappeared. These two devils have been cast out. Nobody dares to praise Slavery; nobody dares to deny the Right of Petition. The third pretension has disappeared only so far as it denied the power of the Nation over Slavery in the Territories; and we are still doomed to hear, in the name of State Rights, the old cry against conditions upon new States. This devil is not yet entirely cast out. Pardon me, if I insist upon putting the national rights over the Territories and the national rights over new States before their admission in the same category. These rights not only go together, but they are one and the same. They are not merely companion and cognate, but they are identical. The one is necessarily involved in the other. Prohibition in the Territories is prolonged in conditions upon new States. The Ordinance of 1787, which is the great example, asserts the *perpetuity* of all its prohibitions; and this

is the rule alike of law and statesmanship. Vain were its prohibitions, if they fell dead in presence of State Rights. The pretension is too irrational. The Missouri Act takes up the rule asserted in the Ordinance, and declares that in certain Territories Slavery shall be prohibited *forever*. A territorial existence terminating in State Rights is a short-lived *forever*. Only by recognizing the power of the Nation over the States formed out of the Territory can this *forever* have a meaning above the prattle of childhood or the vaunt of Bombastes.

The whole pretension against the proposed condition is in the name of State Rights; but it cannot be doubted that it may be traced directly to Slavery. Shall the pretension be allowed to prevail, now that Slavery has disappeared? The principal has fallen; why preserve the incident? The wrong guarded by this pretension has yielded; why should not the pretension yield also? Asserting, as I now do, the validity and necessity of the proposed condition, I would not seem indifferent to the rights of the States in those proper spheres appointed for them. Unquestionably States have rights under the Constitution, which we are bound to respect, — nay, more, which are a source of strength and advantage. It is through the States that the people everywhere govern themselves, and our Nation is saved from a central domination. Here is the appointed function of the States. They supply the machinery of local self-government for the convenience of life, while they ward off the attempts of an absorbing imperialism. *But there can be no State Rights against Human Rights.* Because a State, constituting part of a Nation dedicated to Human Rights,

may govern itself and supply the machinery of local self-government, *it does not follow that such a State may deny Human Rights within its borders.* State Rights, when properly understood, are entirely consistent with the maintenance of Human Rights by the Nation. The State is not humbled, when it receives the mandate of the Nation to do no wrong; nor can the Nation err, when it asserts everywhere within its borders the imperialism of Human Rights. Against this righteous supremacy all pretensions of States must disappear, as darkness before the King of Day.

The song of State Rights has for its constant refrain the asserted *Equality of the States.* Is it not strange that words so constantly employed as a cover for pretensions against Human Rights cannot be found in the Constitution? It is true, that, by the Laws of Nations, all sovereign States, great or small, are equal; but this principle has been extended without authority to States created by the Nation and made a part of itself. There is but one active provision in the Constitution which treats the States as equal, and this provision shows how this very Equality may be waived. Every State, large or small, has two Senators, and the Constitution places this Equality of States under its safeguard by providing that "no State, *without its consent*, shall be deprived of its *equal suffrage* in the Senate." But this very text contains what lawyers might call a "negative pregnant," being a negation of the right to change this rule, with an affirmation that it may be changed. The State, *with its consent*, may be deprived of its equal suffrage in the Senate. And this is the whole testimony of the Constitution to that Equality of States which is now asserted in derogation of all compacts or conditions. It

is startling to find how constantly the obvious conclusions from the text of the Constitution have been overlooked. Even in the contemplation of the Constitution itself, a State may waive its equal suffrage in the Senate, so as to be represented by a single Senator only. Of course, all this must depend on its own consent, in concurrence with the Nation. Nothing is said of the manner in which this consent may be given by the State or accepted by the Nation. But if this important limitation can in any way be made the subject of agreement or compact, pray, Sir, where will you stop? What other power or prerogative of the State may not be limited also, especially where there is nothing in the Constitution against any such limitation? All this I adduce simply by way of illustration. There is no question now of any limitation, in the just sense of this term. A condition in favor of Human Rights cannot be a limitation on a State or on a citizen.

If we look further, and see how the Senatorial equality of States obtained recognition in the Constitution, we shall find new occasion to admire that facility which has accorded to this concession so powerful an influence; and here the record is explicit. The National Convention had hardly assembled, when the small States came forward with their pretensions. Not content with suffrage in the Senate, they insisted upon equal suffrage in the House of Representatives. They had in their favor the rule of the Continental Congress, and also of the Confederation, under which each State enjoyed one vote. Assuming to be independent sovereignties, they had likewise in their favor the rule of International Law. Against these pretensions the large States pleaded the simple rule of justice; and here the best minds con-

curred. On this head the debates of the Convention are interesting. At an early day we find Mr. Madison moving "that the equality of suffrage established by the Articles of Confederation ought not to prevail in the *National* Legislature."[1] This proposition, so consistent with reason, was seconded by Gouverneur Morris, and, according to the report, "being generally relished," was about being adopted, when Delaware, by one of her voices on the floor, protested, saying, that, in case it were adopted, "it might become the duty of her deputies to retire from the Convention."[2] Such was the earliest cry of Secession. Gouverneur Morris, while observing that the valuable assistance of those members could not be lost without real concern, gave his testimony, that "the change proposed was so fundamental an article in a *National* Government that it could not be dispensed with."[3] Mr. Madison followed, saying, very justly, that, "whatever reason might have existed for the equality of suffrage when the Union was a Federal one *among sovereign States*, it must cease when a *National* government should be put into the place."[4] Franklin, in similar spirit, reminded the Convention that the equal suffrage of the States "was submitted to originally by Congress under a conviction of its impropriety, inequality, and injustice."[5] This is strong language from the wise old man, but very true. Elbridge Gerry, after depicting the States as "intoxicated with the idea of their sovereignty," said that "the injustice of allowing each State an equal vote was long insisted on. He voted for it; but it was against his judgment, and under the pressure of

[1] Debates in the Federal Convention, May 30, 1787: Madison Papers, Vol. II. p. 751.

[2] Ibid. [3] Ibid. [4] Ibid., p. 752.

[5] Debates, June 11th: Ibid., p. 841.

public danger and the obstinacy of the lesser States."[1] Against these overwhelming words of Madison, Morris, Franklin, and Gerry, the delegates from Delaware pleaded nothing more than that, without an equal suffrage, "Delaware would have about one ninetieth for its share in the general councils, whilst Pennsylvania and Virginia would possess one third of the whole";[2] and New Jersey, by her delegates, pleaded also "that it would not be safe for Delaware to allow Virginia sixteen times as many votes" as herself.[3] On the part of the small States, the effort was for power disproportioned to size. On the part of the large States there was a protest against the injustice and inequality of these pretensions, especially in a government national in its character. The question was settled by the great compromise of the Constitution, according to which representation in the House of Representatives was proportioned to population, while each State was entitled to an equal suffrage in the Senate. To this extent the small States prevailed, and the Senate ever since has testified to the equality of States; or rather, according to the language of the "Federalist" on this very point, it has been "a palladium to the residuary sovereignty of the States."[4] Thus, by the pertinacity of the small States, was this concession extorted from the Convention, in defiance of every argument of justice and equity, and contrary to the judgment of the best minds; and now it is exalted into a universal rule of Constitutional Law, before which justice and equity must hide their faces.

This protracted and recurring conflict in the Con-

[1] Debates, June 29th: Madison Papers, Vol. II. p. 995.
[2] Debates, June 8th: Ibid., p. 826.
[3] Debates, June 19th: Ibid., p. 902.
[4] No. XLIII. § 8.

vention is compendiously set forth by our great authority, Judge Story, when he says: —

"It constituted one of the great struggles between the large and the small States, which was constantly renewed in the Convention, and impeded it in every step of its progress in the formation of the Constitution. The struggle applied to the organization of each branch of the Legislature. The small States insisted upon an equality of vote and representation in each branch, and the large States upon a vote in proportion to their relative importance and population. . . . . The small States at length yielded the point as to an equality of representation in the House, and acceded to a representation proportionate to the Federal numbers. But they insisted upon an equality in the Senate. To this the large States were unwilling to assent, and for a time the States were on this point equally divided." [1]

This summary is in substantial harmony with my own abstract of the debates. I present it because I would not seem in any way to overstate the case. And here let me add most explicitly, that I lend no voice to any complaint against the small States; nor do I suggest any change in the original balances of our system. I insist only that the victory achieved in the Constitution by the small States shall not be made the apology for a pretension inconsistent with Human Rights. And now, for the sake of a great cause, the truth must be told.

It must not be disguised that this pretension has another origin, outside the Constitution. This is in the Ordinance of 1787, where it is positively provided that any State formed out of the Northwest Territory "shall be admitted, by its delegates, into the Congress of the

[1] Commentaries on the Constitution, (2d edit.,) Vol. I. § 694.

United States *on an equal footing with the original States in all respects whatever.*" Next after the equal suffrage in the Senate stands this provision with its talismanic phrase, *equal footing.* New States are to be admitted on an *equal footing* with the original States in all respects whatever. This language is strong; but nobody can doubt that it must be read in the light of the Ordinance where it appears. Read in this light, its meaning cannot be questioned. By the Ordinance there are no less than six different articles of compact, "forever unalterable, unless by common consent," constituting so many perpetual safeguards: the first perpetuating religious liberty; the second perpetuating *Habeas Corpus,* trial by jury, and judicial proceedings according to the course of the Common Law; the third perpetuating schools and the means of education; the fourth perpetuating the title of the United States in the soil without taxation, the freedom of the rivers as highways, and the liability of the people for a just proportion of the national debt; the fifth perpetuating the right of the States to be admitted into the Union on an *equal footing* with the original States; and then, next in order, the sixth perpetuating freedom, — being that immortal condition which is the golden bough of this mighty oak, — that "there shall be neither slavery nor involuntary servitude in the said Territory." Now it is clear that subjection to these perpetual conditions was not considered in any respect inconsistent with that "equal footing" which was stipulated. Therefore, even assuming that States, when admitted, shall be on an "equal footing" with others, there can be no hindrance to any conditions by Congress kindred to those which were the glory of the Ordinance.

To all who, borrowing a catchword from Slavery, assert the Equality of States in derogation of fundamental conditions, I oppose the plain text of the Constitution, which contains no such rule, except in a single instance, and there the equality may be waived; and I oppose also the Ordinance of 1787, which, while requiring that new States shall be admitted on an "equal footing" with other States, teaches by its own great example that this requirement is not inconsistent with conditions of all kinds, and especially in favor of Human Rights. The Equality of States on the lips of Slave-Masters was natural, for it was a plausible defence against the approaches of Freedom; but this unauthorized phrase, which has deceived so many, must be rejected now, so far at least as it is employed against the Equal Rights of All. As one of the old garments of Slavery, it must be handed to the flames.

From this review it is easy to see that we approach the present question without any impediment or constraint in the Constitution. Not a provision, not a clause, not a sentence, not a phrase in the Constitution can be made an apology even for the present objection, — absolutely nothing; and here I challenge reply. Without any support in the Constitution, its partisans borrow one of the worst pretensions of Slavery, and utter it now as it was uttered by Slave-Masters. Once more we hear the voice of Slavery crying out in familiar tones, that conditions cannot be imposed on new States. Alas that Slavery, which we thought had been slain, is not entirely dead! Again it stalks into this Chamber, like the majesty of buried Denmark, —"in the same figure, like the king that's dead," — and then, like this same ghost, it cries out, "Swear!" and

then again, "Swear!" — and Senators pledged to Freedom take up the old pretension and swear it anew. For myself, I insist not only that Slavery shall be buried out of sight, but that all its wretched pretensions hostile to Human Rights shall be buried with it.

The conditions upon new States are of two classes: *first*, those that *may* be required; *secondly*, those that *must* be required.

The first comprehends those conditions which the Nation may consider it advisable to require, before admitting a new member into the partnership of government. The Constitution, in positive words, leaves to the Nation a discretion with regard to the admission of new States. The words are: "New States *may* be admitted by the Congress into the Union," — thus plainly recognizing a latitude under which any conditions not inconsistent with the Constitution may be required, as by a firm on the admission of a new partner. All this is entirely reasonable; but I do not stop to dwell on it, for the condition which I have at heart does not come under this head.

A fundamental condition in favor of Human Rights is of that essential character that it *must* be required. Not to require it is to abandon a plain duty; so it seems to me. I speak with all deference to others, but I cannot see it otherwise.

The Constitution declares that "the United States shall guaranty to every State in this Union *a republican form of government*." These are grand words, perhaps the grandest in the Constitution, hardly excepting the Preamble, which is so full of majestic meaning and such a fountain of national life. Kin-

dred to the Preamble is this supreme obligation imposed on the United States to guaranty a republican government. There it is. You cannot avoid this duty. Called to its performance, you must supply a practical definition of a republican government. This again you cannot avoid. By your oaths, by all the responsibilities of your position, you must say what in your judgment is a republican government, and you must so decide as not to discredit our fathers and not to give an unworthy example to mankind. Happily the definition is already of record in our history. Our fathers gave it to us, as amid the thunders of Sinai, when they put forth their Declaration of Independence. There it stands in the very front of our Great Charter, embodied in two simple, self-evident truths, — first, that all men are equal in rights, and, secondly, that all just government is founded only on the consent of the governed, — the two together making an axiomatic definition which proves itself. Its truth is like the sun; blind is he who cannot see it. And this is the definition bequeathed as a freehold by our fathers. Though often assailed, even by Senators, it is none the less true. So have I read of savages who shot their arrows at the sun. Clearly, then, that is a republican government where all have equal rights and participate in the government. I know not if anything need be added; I am sure that nothing can be subtracted.

The Constitution itself sets the example of imposing conditions upon the States. Positively it says, no State shall enter into any treaty, alliance, or confederation; no State shall grant letters of marque and reprisal; no State shall coin money; no State shall emit bills of credit. Again it says, no State shall, without the con-

sent of Congress, lay any duty of tonnage, or keep troops or ships of war in time of peace. All these are conditions in the text of the Constitution so plain and intelligible as to require no further elucidation. To repeat them on the admission of a State would be superfluous. It is different, however, with that highest condition of all, that the State shall be republican. This requires repetition and elucidation, so as to remove all doubt of its application, and to vitalize it by declaring what is meant by a republican government.

Here I might close this argument; but there are two hostile pretensions which must be exposed: the first founded on a false interpretation of "qualifications," being nothing less than the impossible assumption, that, because the States may determine the "qualifications" of electors, therefore they can make color a criterion of the electoral franchise; and the second founded on a false interpretation of the asserted power of the States "to regulate suffrage," being nothing less than the impossible assumption that under the power to regulate suffrage the rights of a whole race may be annihilated. These two pretensions are of course derived from Slavery. They are hatched from the eggs that the cuckoo bird has left behind. Strange that Senators will hatch them!

1. By the Constitution it is provided that "the electors in each State shall have the *qualifications* requisite for electors of the most numerous branch of the State Legislature." On this clause Senators build the impossible pretension that a State cannot be interrupted in its disfranchisement of a race. Here is the argument: Because a State may determine the *quali-*

fications of electors, *therefore* it may deprive a whole race of equal rights and of participation in the Government. Logically speaking, here are most narrow premises for the widest possible conclusion. On the mere statement, the absurdity is so unspeakable as to recall the kindred pretension of Slavery, that, because commerce is lawful, therefore commerce in human flesh is lawful also. If the consequences were not so offensive, this "argal" might be handed over to consort with that of the Shakespearean grave-digger. But the argument is not merely preposterous, it is insulting to the human understanding, and a blow at human nature itself. If I use strong language, it is because such a proclamation of tyranny requires it. Admitting that the States may determine the "qualifications" of electors, what then? Obviously it must be according to the legitimate meaning of this word. And here, besides reason and humanity, two inexhaustible fountains, we have two other sources of authority: first, the Constitution, in which the word appears, and, secondly, the dictionaries of the English language, out of both of which we must condemn the intolerable pretension.

The Constitution, where we find this word, follows the Declaration of Independence, and refuses to recognize any distinction of color. Search, and you will confess that there is no word of "color" in its text; nor is there anything there on which to found any disfranchisement of a race. The "qualifications" of different officers, as President, Vice-President, Senators, and Representatives, are named; but "color" is not among these. The Constitution, like the Ten Commandments and the Beatitudes, embraces all alike within its mandates and all alike within its promises. There are none who must

not obey it; there can be none who may not claim its advantages. By what title do you exclude a race? The Constitution gives no such title; you can only find it in yourselves. The fountain is pure; it is only out of yourselves that the waters of bitterness proceed.

The dictionaries of our language are in harmony with the Constitution. Look at "Qualification" in Webster or Worcester, the two best authorities of our time, and you will find that the word means "fitness," "capability," "accomplishment," "the condition of being qualified"; but it does not mean "color." It embraces age, residence, character, education, and the payment of taxes, — in short, all those conditions which, when honestly administered, are in the nature of *regulation*, not of *disfranchisement*. The English dictionaries most used by the framers of the Constitution were Bailey and Johnson. According to Bailey, who was the earliest, this important word is thus defined: —

"(1.) *That which fits any person or thing for any particular purpose.*"

"(2.) *A particular faculty or endowment, an accomplishment.*"

According to Johnson, who is the highest authority, it is thus defined: —

"(1.) *That which makes any person or thing fit for anything.*"

EXAMPLE. — "It is in the power of the prince to make piety and virtue become the fashion, if he would make them necessary *qualifications* for preferment. — SWIFT."

"(2.) *Accomplishment.*"

EXAMPLE. — "Good *qualifications* of mind enable a magistrate to perform his duty, and tend to create a public esteem of him. — ATTERBURY."

By these definitions this word means "fitness," or "accomplishment," and, according to the well-chosen examples from Swift and Atterbury, it means qualities like "piety" and "virtue," or like faculties "of mind," all of which are more or less within the reach of every human being. But it is impossible to extend this list so as to make "color" a quality, — absolutely impossible. Color is a physical condition affixed by the God of Nature to a large portion of the human race, and insurmountable in its character. Age, education, residence, property, — all these are subject to change; but the Ethiopian cannot change his skin. On this last distinctive circumstance I take my stand. *An insurmountable condition is not a qualification, but a disfranchisement.* Admit that a State may determine the "qualifications" of electors, it cannot, under this authority, arbitrarily exclude a whole race.

Try this question by examples. Suppose South Carolina, where the blacks are numerous, should undertake to exclude the whites from the polls on account of "color"; would you hesitate to arrest this injustice? You would insist that a government sanctioning such a denial of rights, under whatever pretension, could not be republican. Suppose another State should gravely declare that *all with black eyes* should be excluded from the polls, and still another should gravely declare that *all with black hair* should be excluded from the polls, I am sure that you would find it difficult to restrain the mingled derision and indignation which such a pretension must excite. But this fable pictures your conduct. All this is now gravely done by States; and Senators gravely insist that such exclusion is proper in determining the "qualifications" of electors.

2. Like unto the pretension founded on a misinterpretation of "qualifications" is that other founded on a misinterpretation of the asserted power of a State to make "regulations." Listen to this pretension. Assuming that a State may *regulate* the elections without the intervention of Congress, it is insisted that it may disfranchise a race. Because a State may regulate the elective franchise, *therefore* it may destroy this franchise. Surely it is one thing to regulate, and quite another thing to destroy. The power to regulate cannot involve any such conclusion of tyranny. To every such wretched result, howsoever urged, there is one sufficient reply, — *Non sequitur.*

According to the Constitution, "the *times, places, and manner* of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such *regulations,* except as to the places of choosing Senators." Here is the text of this portentous power to blast a race. In these simple words no such power can be found, unless the seeker makes the Constitution a reflection of himself. The times, places, and manner of holding elections are referred to the States, — nothing more; and even these may be altered by Congress. Being matters of form and convenience only, in the nature of *police,* they are justly included under the head of "regulations," like the sword and uniform of the army. Do we not familiarly speak of a *regulation* sword and a *regulation* sash? Who will dare to say that under this formal power of *regulation* a whole race may be despoiled of equal rights and of all participation in the Government? This very pretension was anticipated by Mr. Madison, and condemned in

advance. Here are his decisive words in the Virginia Convention: —

"Some States might regulate the elections on the principles of equality, and others might regulate them otherwise. . . . . Should the people of any State by any means be deprived of the right of suffrage, *it was judged proper that it should be remedied by the General Government.*" [1]

Thus was it expressly understood, at the adoption of the Constitution, that Congress should have the power to prevent any State, under the pretence of regulating the suffrage, from depriving the people of this right, or from interfering with the principle of *Equality.*

Kindred to this statement of Mr. Madison is that other contemporary testimony which will be found in the "Federalist," where the irrepealable rights of citizens are recognized without distinction of color. This explicit language cannot be too often quoted. Here it is: —

"It is only under the pretext that the laws have transformed the negroes into subjects of property that a place is denied to them in the computation of numbers; and it is admitted, that, if the laws were to restore the rights which have been taken away, *the negroes could no longer be refused an equal share of representation with the other inhabitants.*" [2]

This testimony is as decisive as it is authentic. Consider that it was given in explanation and vindication of the Constitution. Consider that the Constitution was commended for adoption by the assertion, that, on the termination of Slavery, "the negroes could no longer be refused an *equal share* of representation with the other inhabitants." In the face of this assurance, how can it

[1] Elliot's Debates, Vol. III. p. 367. [2] The Federalist, No. LIV.

be now insisted, that, under the simple power to regulate the suffrage, a State may deny to a whole race that "equal share of representation" which was promised? Thus from every quarter we are brought to the same inevitable conclusion.

Therefore I dismiss the pretension founded on the power to make *regulations*, as I dismiss that other founded on the power to determine *qualifications*. Each proceeds on a radical misconception. Admit that a State may determine *qualifications;* admit that a State may make *regulations;* it cannot follow, by any rule of logic or law, that, under these powers, either or both, it may disfranchise a race. The pretension is too lofty. No such enormous prerogative can be wrung out of any such moderate power. As well say, that, because a constable or policeman may keep order in a city, therefore he may inflict the penalty of death,—or, because a father may impose proper restraint upon a child, therefore he may sell him into slavery. We have read of an effort to extract sunbeams out of cucumbers; but the present effort to extract a cruel prerogative out of the simple words of the Constitution is scarcely less absurd.

I conclude as I began, in favor of requiring conditions from States on their admission into the Nation; and I insist that it is our especial duty, in every possible way, by compact and by enactment, to assure among these conditions the Equal Rights of All, and the participation of every citizen in the government over him, without which the State cannot be republican. For the present I confine myself to the question of conditions on the admission of States, without considering the broader obligation of Congress to make Equal

Rights coextensive with the Nation, and thus to harmonize our institutions with the principles of the Declaration of Independence. That other question I leave to another occasion.

Meanwhile I protest against the false glosses originally fastened upon the Constitution by Slavery, and, now continued, often in unconsciousness of their origin, perverting it to the vilest uses of tyranny. I protest against that exaggeration of pretension which out of a power to make "regulations" and to determine "qualifications" can derive an unrepublican prerogative. I protest against that pretension which would make the asserted Equality of States the cover for a denial of the Equality of Men. The one is an artificial rule, relating to artificial bodies; the other is a natural rule, relating to natural bodies. The one is little more than a legal fiction; the other is a truth of Nature. Here is a distinction which Alexander Hamilton recognized, when, in the debates of the Convention, he nobly said: —

"As States are a collection of individual men, which ought we to respect most, — the rights of the people composing them, or of the artificial beings resulting from the composition? Nothing could be more preposterous or absurd than to sacrifice the former to the latter."[1]

High above States, as high above men, are those commanding principles which cannot be denied with impunity. They will be found in the Declaration of Independence, expressed so clearly that all can read them. Though few, they are mighty. There is no humility in bending to their behests. As man rises

[1] Debates in the Federal Convention, June 29, 1787: Madison Papers, Vol. II. p. 993.

in the scale of being while walking in obedience to the Divine will, so is a State elevated by obedience to these everlasting truths. Nor can we look for harmony in our country until these principles bear unquestioned sway, without any interdict from the States. That unity for which the Nation longs, with peace and reconciliation in its train, can be assured only through the Equal Rights of All, proclaimed by the Nation everywhere within its limits, and maintained by the national arm. Then will the Constitution be filled and inspired by the Declaration of Independence, so that the two shall be one, with a common life, a common authority, and a common glory.

ELIGIBILITY OF A COLORED CITIZEN TO CONGRESS.

LETTER TO AN INQUIRER AT NORFOLK, VA., JUNE 22, 1868.

THIS letter appeared in a Richmond paper.

SENATE CHAMBER, June 22, 1868.

DEAR SIR, — I have your letter of the 18th, in reference to the eligibility of a colored man to Congress.

I know of no ground on which he could be excluded from his seat, if duly elected; and I should welcome the election of a competent representative of the colored race to either House of Congress as a final triumph of the cause of Equal Rights. Until this step is taken, our success is incomplete.

Yours truly,

CHARLES SUMNER.

INDEPENDENCE, AND THOSE WHO SAVED THE ORIGINAL WORK.

LETTER ON THE SOLDIERS' MONUMENT AT NORTH WEYMOUTH, MASS., JULY 2, 1868.

SENATE CHAMBER, July 2, 1868.

MY DEAR SIR, — I wish that I could take part in the interesting ceremonies to which you invite me; but my duties will keep me here.

On the anniversary of the birth of our Nation you will commemorate the death of patriots who gave their lives that the Nation might live. Grateful to our fathers, who at the beginning did so much, we owe an equal debt to those who saved the original work.

The monument which you rear will be national in its character. Dedicated on the anniversary of Independence, it will have for its special object to guard forever the memory of those through whom the first fruits of Independence have been secured.

Our fathers established the National Independence; our recent heroes have made it perpetual through those vital principles which can never die. Honor to the fathers! Honor also to the sons, worthy of the fathers!

Accept my best wishes; believe me, my dear Sir, very faithfully yours,

CHARLES SUMNER.

GEN. B. F. PRATT.

COLORED SENATORS,—THEIR IMPORTANCE IN SETTLING THE QUESTION OF EQUAL RIGHTS.

LETTER TO AN INQUIRER IN SOUTH CAROLINA, JULY 3, 1868.

THE following letter, from a South Carolina paper, is one of many in the same sense which found its way to the public.

SENATE CHAMBER, July 3, 1868.

DEAR SIR, — I have never given any opinion in regard to the Senatorial question in your State, except to express regret that the golden opportunity should be lost of making a colored citizen Senator from South Carolina.

Such a Senator, if competent, would be a powerful support to the cause of Equal Rights. His presence alone would be a constant testimony and argument. Nothing could do so much to settle the question of Equal Rights forever in the United States. The howl against the negro, which is sometimes heard in the Senate, would cease. A colored Senator would be as good as a Constitutional Amendment, making all backward steps impossible.

I write now frankly, in reply to your inquiry, and without any purpose of interfering in your election. You will pardon my anxiety for the cause I have so much at heart.

Accept my best wishes, and believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

To THADDEUS K. SASPORTAS, Esq., Columbia, S. C.

FINANCIAL RECONSTRUCTION THROUGH PUBLIC FAITH AND SPECIE PAYMENTS.

SPEECH IN THE SENATE, ON THE BILL TO FUND THE NATIONAL DEBT, JULY 11, 1868.

We denounce all forms of Repudiation as a national crime [*prolonged cheers*]; and the national honor requires the payment of the public indebtedness, *in the utmost good faith*, to all creditors, at home and abroad, *not only according to the letter, but to the spirit of the laws under which it was contracted.* [*Applause.*] — CHICAGO PLATFORM, May, 1868.

Fundamentum est autem justitiæ fides, id est, dictorum conventorumque constantia et veritas. — CICERO, *De Officiis*, Lib. I. Cap. 7.

SPEECH.

THE Senate having under consideration the Bill for funding the National Debt and for the Conversion of the Notes of the United States, Mr. Sumner said: —

MR. PRESIDENT, — After a tempest sweeping sea and land, strewing the coast with wrecks, and tumbling houses to the ground, Nature must become propitious before the energy of man can repair the various losses. Time must intervene. At last ships are launched again, and houses are built, in larger numbers and fairer forms than before. A tempest has swept over us, scourging in every direction; and now that its violence has ceased, we are occupied in the work of restoration. Nature is already propitious, and time, too, is silently preparing the way, while the national energies are applied to the work.

To know what to do, we must comprehend the actual condition of things, and how it was brought about. All this is easy to see, if we will only look.

It is a mistake of too constant occurrence to treat the financial question by itself, without considering its dependence upon the abnormal condition through which the country has passed. The financial question, in all its branches, depends upon the political, and cannot be

separated. I might use stronger language. It is a part of the political question; and now that Reconstruction seems about to be accomplished, it is that enduring part which still remains.

Our present responsibilities, whether political or financial, have a common origin in that vast Rebellion, when the people of eleven States, maddened by Slavery, rose against the Nation. As the Rebellion was without example in its declared object, so it was without example in the extent and intensity of its operations. It sought nothing less than the dismemberment of our Nation and the establishment of a new power with Slavery as its quickening principle. The desperate means enlisted by such a cause could be encountered only by the most strenuous exertions in the name of Country and of Human Rights. Here was Slavery, barbarous, brutal, vindictive, warring for recognition. The tempest or tornado can typify only feebly the ravage that ensued. There were days of darkness and despair, when the national existence was in peril. Rebel armies menaced the Capitol, and Slavery seemed about to vindicate its wicked supremacy.

Looking at the scene in its political aspects, we behold one class of disorders, and looking at it in its financial aspects, we behold still another, — both together constituting a fearful sum-total, where financial disorder mingles with political. Turn, first, to the political, and you will see States, one after another, renouncing their relations with the Nation, and constituting a new government, under the name of Confederacy, with a new Constitution, making Slavery its corner-stone, — all of which they sought to maintain by arms, while, in aggra-

vation of these perils, Foreign Powers gave ominous signs of speedy recognition and support. Look next to the financial side, and you will see business in some places entirely prostrate, in others suddenly assuming new forms; immense interests destroyed; property annihilated; the whole people turned from the thoughts of peace to the thoughts of war; vast armies set on foot, in which the youthful and strong were changed from producers to destroyers, while life itself was consumed; an unprecedented taxation, commensurate with the unprecedented exigency; and all this followed by the common incidents of war in other countries and times, — first, the creation of a national debt, and, secondly, the substitution of inconvertible paper as a currency. In this catalogue of calamities, political and financial, who shall say which was the worst? Certainly it is difficult to distinguish between them. One grew out of the other, so that they belong together and constitute one group, all derived ultimately from the Rebellion, and directly depending upon it. So long as Slavery continued in arms, each and all waxed in vastness; and now, so long as any of these remain, they testify to this same unnatural crime. The tax-gatherer, taking so much from honest industry, was born of the Rebellion. Inconvertible paper, deranging the business of the country at home and abroad, had the same monstrous birth. Our enormous taxation is only a prolongation of the Rebellion. Every greenback is red with the blood of fellow-citizens.

To repair these calamities, political and financial, the first stage was the overthrow of the Rebellion in the field, thus enabling the Nation to reduce its armaments, to arrest its accumulating debt, and to cease anxiety on

account of foreign intervention so constantly menaced. Thus relieved, we were brought to a resting-place, and the Nation found itself in condition to begin the work of restoration.

Foremost came the suppression of Slavery, in which the Rebellion had its origin. Common prudence, to say nothing of common humanity, required this consummation, without which there would have been a short-lived truce only. So great a change necessarily involved other changes, while there was the ever-present duty to obtain from the defeated Rebels, if not indemnity for the past, at least security for the future. It was impossible to stop with the suppression of Slavery. That whole barbarous code of wrong and outrage, whose first article was the denial of all rights to an oppressed race, was grossly inconsistent with the new order of things. It was necessary that it should yield to the Equal Rights of All, promised by the Declaration of Independence. The citizen, lifted from Slavery, must be secured in all his rights, civil and political. Loyal governments, republican in form, must be substituted for Rebel governments. All this being done, the States, thus transformed, will assume once more their ancient relations to the Nation. This is the work of Political Reconstruction, constituting the new stage after the overthrow of the Rebellion.

Meanwhile there has been an effort and a longing for Financial Reconstruction also, — sometimes without sufficiently reflecting that there can be small chance for any success in this direction until after Political Reconstruction. Here also we must follow Nature,

and restore by removing the disturbing cause. This is the natural process. Vain all attempt to reconstruct the national finances while the Rebellion was still in arms. This must be obvious to all. Vain also while Slavery still domineered. Vain also while Equal Rights are without a sure defence against the oppressor. Vain also while the Nation still palpitates with its efforts to obtain security for the future. Vain also until the States are all once more harmonious in their native spheres, like the planets, receiving and dispensing light.

Nothing is more sensitive than Credit, which is the essential element of financial restoration. A breath will make it flutter. How can you expect to restore the national credit, now unnaturally sensitive, while the Nation is still uneasy from those Rebel pretensions which have cost so much? Security is the first condition of Financial Reconstruction; and I am at a loss to find any road to it, except through Political Reconstruction. All this seems so plain that I ought to apologize for dwelling on it. And yet there are many, who, while professing a desire for an improvement in our financial condition, perversely turn their backs upon the only means by which this can be accomplished. Never was there equal folly. Language cannot picture it. Every denial of Equal Rights, every impediment to a just reconstruction in conformity with the Declaration of Independence, every pretension of a "white man's government" in horrid mockery of self-evident truths declared by our fathers, and of that brotherhood of mankind declared by the Sermon on Mars Hill, is a bar to that Financial Reconstruction without which the Rebellion still lingers among us. So long as a dollar of irredeem-

able paper is forced upon the country, the Rebellion still lives, in its spurious progeny.

Party organization and Presidential antagonism have thus far stood in the way, while at each stage individual perverseness has played its part. The President has set himself obstinately against Political Reconstruction; so also has the Democratic Party; others have followed, according to the prejudices of their nature; and so the national finances have suffered. Not the least of the offences of Andrew Johnson is the adverse influence he has exerted on this question. All that he has done from the beginning has tended to protract the Rebellion and to extend the disorder of our finances. And yet there are many not indifferent to the latter who have looked with indifference upon his criminal conduct. So far as their personal interests depended on an improved condition of the finances, they have already suffered; but it is hard that the country should suffer also. Andrew Johnson has postponed specie payments, and his supporters of all degrees must share the responsibility.

Such is my confidence in the resources of our country, in the industry of its people, and in the grandeur of its destinies, that I cannot doubt the transcendent future. Alas that it should be interrupted by unwise counsels, even for a day! Financial Reconstruction is postponed only. It must come at last. Here I have no panacea that is not as simple as Nature. I know of no device or trick or medicine by which this cure can be accomplished. It will come with the general health of the body politic. It will come with the renovated life of the Nation, when it is once more complete in form, when every part is in sympathy with the whole, and the Rebellion, with all its offspring, is trampled out

forever. In such a condition of affairs, inconvertible paper would be an impossibility, as much as a bill of sale for a human being.

Meanwhile there are certain practical points which must not be forgotten. Foremost among these I put the absolute dependence of the national finances upon the faithful performance of all our obligations to the national freedmen. Pardoned Rebels will never look with complacency upon the national debt, or the interest which testifies semiannually to its magnitude. Their political colleagues at the North will be apt to sympathize with them. Should the scales at any time hang doubtful, it is to others that we must turn to adjust the balance. Therefore, for the sake of the national finances, I insist that the national freedmen shall be secured and maintained in Equal Rights, so that local prejudices and party cries shall be unavailing against them. You who have at heart the national credit, on which so much depends, must never fail to cherish the national freedmen, treating their enemies as if they were your enemies. Every blow at them will rebound upon yourselves.

In dealing with the financial question, there are two other points of ever-present importance: first, the necessity of diminishing, so far as practicable, the heavy burden of taxation so oppressive to the people; and, secondly, the necessity of substituting specie for inconvertible paper. Here are two objects, which, when accomplished, will add infinitely to the wealth and happiness of the country, besides being the assurance that the Nation has at last reached that condition of repose so much longed for.

Before considering these two points in detail, I venture to remark that there is one condition, preliminary in character and equally essential to both, through which taxation will be lightened and specie payments will be hastened. I refer to the Public Faith, which must be sacredly preserved above all question or suspicion. The word of our Nation must be as good as its bond; and nobody must attempt to take a tittle from either. Nothing short of universal wreck can justify any such bankruptcy. Let the Public Faith be preserved, and all that you now seek will be easy.

A virtuous king of early Rome dedicated a temple on the Capitol Hill itself to a divinity under the name of *Publica Fides*, who was represented with a wreath of laurel about her head, carrying ears of corn and a basket of fruit, — typical of honor and abundance sure to follow in her footprints. In the same spirit another temple was dedicated to the god Terminus, who presided over boundaries. The stones set up to mark the limits of estates were sacred, and on these very stones there were religious offerings to the god. The heathen maledictions upon the violator were echoed also by the Hebrews, when they said: "Cursed be he that removeth his neighbor's landmark: and all the people shall say, Amen." [1] In those early Roman and Hebrew days there was no national debt divided into bonds; there was nothing but land. But a national bond is as well defined as a piece of land. Here, then, is a place for the god Terminus. Every obligation is like a landmark, not to be removed without curses. Here, also, is a place for that other divinity, *Publica Fides*, with laurelled head, and hands filled with corn and fruit.

[1] Deuteronomy, xxvii. 17.

Public Faith may be seen in the evil which springs from its loss and in the good which overflows from its preservation. It is like honor: and yet, once lost, more than dishonor is the consequence; once assured, more than honor is the reward. It is a possession surpassing all others in value. The gold and silver in your Treasury may be counted; it stands recorded, dollar for dollar, in the national ledger; but the sums which the unsuspected credit of a magnanimous nation can command are beyond the record of any ledger. Public Faith is more than mines of silver or gold. Only from Arabian story can a fit illustration be found, as when, after all human effort had failed, the Genius of the Lamp reared the costly palace and stored it with beauty. Public Faith is in itself a treasury, a tariff, and an internal revenue, all in one. These you may lose; but if the other is preserved, it will be only for a day. The Treasury will be replenished, the tariff will be renewed, the internal revenue will be restored. With Public Faith as an unfailing law, the Nation, like Pactolus, will sweep over golden sands; or, like Midas, it will change into gold whatever it touches. Keep, then, the Public Faith as the "open sesame" to all that you can desire; keep it as you would keep the philosopher's stone of fable, having which, you have all.

And yet, in the face of this plain commandment, on which hangs so much of all that is most prized in national existence, we are called to break faith. It is proposed to tax the national bonds, in violation of the original bargain on which the money was lent. Sometimes the tax is to be by the Nation, and sometimes by the States. The power to do this wrong you may possess, but the right never. Do what you will, there is one

thing you cannot do: you cannot make wrong right. It is in vain that you undertake to set aside the perpetual obligation which you have assumed. Against every such pretension, whether by speech or vote, there is this living duty, which will survive Congress and politician alike. Puny as the hand of a child is the effort to undo this original bargain. The Nation has promised six per cent. interest, payable semiannually in coin, nor more nor less, without any abatement; and then, having bound itself, it proceeds to guard against the States by declaring specifically that the bonds shall be "exempt from taxation by or under State authority." Such is the bargain. There it is; and it must continue unchanged, except by the consent of the parties, until the laws of the universe tumble into chaos.

The rogue in Shakespeare exclaims, "What a fool Honesty is! and Trust, his sworn brother, a very simple gentleman!" In equal levity it is said, "Tax the bonds," although, by the original bargain on which the money was obtained, amid the trials of war for the safety of the Nation, it was expressly stipulated that these bonds should not be taxed. Nevertheless, tax the bonds! Of course, by taxing the bonds the bargain is brutally broken, — and this, too, after the Nation has used the money. Such a transaction in common life, except where bankruptcy had supervened, would be intolerable. A proud Nation, justly sensitive to national honor, as the great Republic through whose example liberal institutions are commended to mankind, cannot do this thing.

The proposition to tax the bonds, in open violation of the original bargain, is similar in spirit to that other enterprise, which, under various discordant ensigns, pro-

poses to pay the national bonds with inconvertible paper. Here at once, and on the threshold, Public Faith interposes a summary protest. On such a question debate even is dangerous; the man who doubts is lost. The money was borrowed and lent on the undoubting faith that it was to be paid in coin. Nothing to the contrary was suggested, imagined, or dreamed, at the time. Behind all forms of language, and even all omissions, this obligation stands forth, in the nature of the case, explained and confirmed by the history of our national loans, and by the official acts of successive Secretaries of the Treasury interpreting the obligations of the Nation.

So much stress is laid upon the language of the five-twenties that I cannot let it pass. The terms employed were precisely those in previous bonds of the United States where the principal was paid in coin, some of which are still outstanding. Had there been any doubt about the meaning, it was fixed by the general understanding, and by special declarations of responsible persons speaking for the Nation. On 26th May, 1863, Mr. Harrington, the Assistant Secretary of the Treasury, in an official letter, says: "These bonds will, therefore, be paid in gold." On 15th February, 1864, Mr. Field, also Assistant Secretary of the Treasury, writes: "I am directed by the Secretary to say that it is the purpose of the Government to pay said bonds, like other bonds of the United States, in coin, at maturity." On 18th May, 1864, Mr. Chase, at the time Secretary of the Treasury, wrote: "These bonds, *according to the usage of the Government,* are payable in coin." Mr. Fessenden, while Secretary of the Treasury, in his annual report to Congress, expressed the same conclusion; and his succes-

sor, Mr. McCulloch, in a letter of 15th November, 1866, says: "I regard, as did also my predecessors, all bonds of the United States as payable in coin." There are also numerous advertisements from the Treasury, and from its business agents, all in the same sense.

Here is a succession of authorities, embracing high functionaries of the United States, all concurring in affixing upon these bonds the obligation to pay in coin. As testimony to the meaning of the bonds, it is important; but considering that all these persons represented the National Treasury, and that they were the agents of the Nation for the sale of these very bonds, their representations are more than testimony. Until their authority is disowned by Congress, and their representations discarded, it is difficult to see why their language must not be treated as part of the contract, at least in all sales subsequent to its publication. It must not be forgotten that these original sales were mainly to bankers and brokers, and in large amounts, for the purpose of resale to small purchasers seeking investments. It was in reply to parties interested in these resales that the letters of Assistant Secretary Field and Mr. Chase were written, pledging the Nation to payment in coin. At the date of these important letters Congress was in session, and, although the opportunity was constant, there was no protest against the meaning thus authoritatively affixed to these obligations. The bonds were in the market, advertised and sold daily, with a value established by the representations of these national agents; and Congress did not interfere to set aside these representations. By subsequent Acts similar loans were authorized, and nobody protested. There was the supplementary clause of 3d March, 1864, for the issue of eleven millions of these

bonds, to cover an excess subscribed above the amount authorized by the original Act. This was debated in the Senate on the 1st of March; but you will search the "Globe" in vain for any protest. Then came other Acts, at different dates, by which the loan was further enlarged to its present extent, and all the time these representations were uncontradicted. Against them there was no Act of Congress, no protest, nothing. If this is not "acquiescence," then I am at a loss to know how acquiescence can be shown. Therefore do I insist that these representations are a part of the contract by which the Nation is bound.

It is said that in the five-twenty bonds there are words promising interest in coin, but nothing with regard to the principal. Forgetting the contemporary understanding and the official interpretation, and assuming that at maturity the bond is no better than a greenback, it becomes important to know the character of this obligation. On its face a greenback is a promise to pay a certain number of dollars. It is paper, and it promises to pay "dollars." Here is an example, which I take from my pocket: "The United States promise to pay to the bearer *five dollars*," — not five dollars in paper, or in some other substituted promise, but "five dollars," which can mean nothing else than the coin known over the world with the stamp of Spain, Mexico, and the United States, being a fixed value, which passes current in every zone and at the antipodes. The "dollar" is an established measure of value, like the five-franc piece of France, or the pound sterling of England. As well say, that, on a promise to pay so many francs in France, or so many pounds sterling in England, you could honestly acquit yourself by handing over a scrap of printed paper,

inconvertible in value. This could not be done. The promise in our greenbacks carries with it an ultimate obligation to pay the silver dollar whose chink is so familiar in the commerce of the world. The convertibility of the greenback is for the present suspended; but when paid, it must be in coin. To pay with another promise is to renew, and not to discharge the debt. But the obligation in our bonds is to pay "dollars" also, *whenever the bonds are paid;* it may be after five years, or, in the discretion of the Nation, not till twenty years, but, *when paid,* it must be in "dollars." Such is the stipulation; nor could the addition of "coin" or "gold" essentially change this obligation. *It is contrary to reason that a bond should be paid in an inferior obligation.* It is dishonest to force inconvertible paper without interest in payment of an interest-bearing obligation. The statement of the case is enough. Such an attempt disturbs the reason and shocks the moral sense.

Between the bond and the greenback there is an obvious distinction, doubly attested by the Act of Congress creating them both, — for they were created together. This distinction appears, first, in the title of the Act, and, secondly, in its provisions. According to its title, it is "An Act to authorize the issue of United States notes, *and for the redemption or funding thereof, and for funding the floating debt of the United States.*"[1] In brief, greenbacks were made a legal tender, and authority was given to fund them in these bonds. This appears in the very title of the Act. Now the object of funding is to bring what is uncertain and floating into a permanent form; and accordingly greenbacks were funded and placed on interest. The bonds were a substitute for

[1] Act of February 25, 1862: Statutes at Large, Vol. XII. pp. 345–348.

the greenbacks; but the new theory makes the greenbacks a substitute for the bonds. To carry forward still further the policy of the Act, it was provided that the greenbacks might be exchanged at once for bonds; and then, by the Act of 11th July, 1862,[1] it was further provided that these very greenbacks "may be paid in coin," at the direction of the Secretary, instead of being received in exchange for certificates of deposit, which were convertible into bonds, — thus treating the bonds as the equivalent of coin. The subsequent repeal of these provisions does not alter their testimony to the character of these bonds. Thus, at every turn, we are brought to the same conclusion. The dishonor of these obligations, whatever form it may assume, and whatever pretext it may adopt, is nothing but Repudiation.

The word *Repudiation*, now so generally used to denote the refusal to pay national obligations, has been known in this sense only recently. In the early dictionaries of our language it had no such signification. According to Dr. Johnson, it meant simply "divorce," "rejection," as when a man put away his wife. It began to be known in its present sense when Mississippi, the State of Jefferson Davis, dishonored her bonds. From that time the word has been too familiar in our public discussions. It was not unnatural that a State mad with Slavery should dishonor its bonds. Rejecting all obligations of humanity and justice, it easily rejected the obligations of Public Faith. Slavery was in itself a perpetual *repudiation*, and slave-masters were unblushing *repudiators*. Such an example is not fit for our Nation at this great period of its history.

[1] Statutes at Large, Vol. XII. p. 532.

It is one of the calamities of war, that, while it compels the employment of large means, it blunts the moral sense, and breeds too frequently an insensibility to the obligations incurred. A national debt shares for the time the exceptional character of war itself. Contracted hastily, it is little regarded except as a burden. At last, when business is restored and all things assume their natural proportions, it is recognized in its true character. The country accommodates itself to the pressure. This time is now at hand among us, if not arrested by disturbing influences. Unhappily, the demands of Public Faith are met by higgling and chaffering, and we are gravely reminded that the "bloated bond-holders" now expect more than they gave, — forgetting that they gave in the darkness of the war, at the appeal of the Nation, and to keep those armies in the field through which its existence was preserved, — forgetting also that among these bond-holders, now so foully stigmatized, were the poor, as well as the rich, all giving according to their means. It was not in the ordinary spirit of money-lending that those contributions were made. Love of country entered into them, and made them more than money. If the interest was considerable, it was only in proportion to the risk. Every loan at that time was a contract of bottomry on the Nation, — like money lent to a ship in a strange port, and conditioned on its arrival safe at home, — so that it failed entirely, if Slavery, by the aid of Foreign Powers, established its supremacy. God be praised, the enemy has been overcome! It remains now that we should overcome that other enemy, which, hardly less malignant than war itself, would despoil the Nation of its good name and take from it all the might of honesty. And here to every citizen, and especially to

every legislator, I would address those incomparable words of Milton in his sonnet to Fairfax:—

> "Oh, yet a nobler task awaits thy hand,
> (For what can war but endless war still breed?)
> Till truth and right from violence be freed,
> *And Public Faith cleared from the shameful brand*
> *Of public fraud.*"

The proposition to pay bonds in greenbacks becomes futile and fatuous, when it is considered that such an operation would be nothing more than the substitution of greenbacks for bonds, and not a payment of anything. The form of the debt would be changed, but the debt would remain. Of the twenty-five hundred millions which we now owe, whether in greenbacks or bonds, every dollar must be paid, sooner or later, or be ignobly repudiated. By paying the interest of the bonds in coin, instead of greenbacks, the annual increase of the debt to this extent is prevented. But the principal remains to be paid. If this be attempted in greenbacks, it will be by an issue far beyond all the demands of the currency. There will be a deluge of greenbacks. The country must suffer inconceivably under such a dispensation. The interest on the bonds may be stopped by the substitution, but the currency will be depreciated infinitely beyond any such dishonest saving. The country will be bankrupt. Inconvertible paper will overspread the land, to the exclusion of coin or any chance of coin for some time to come. Farewell then to specie payments! Greenbacks will be everywhere. The multitudinous rats that swam the Rhine and devoured Bishop Hatto in his tower were not more destructive. The cloud of locusts described by Milton as "warping on the eastern wind" and "darkening all the land of Nile," were not more pestilential.

I am now brought to the practical question, to which I have already alluded: How the public burdens shall be lightened. Of course, in this work, the Public Faith, if kept sacred, will be a constant and omnipresent agency, powerful in itself, and powerful also in its reinforcement of all other agencies.

It will not seem trivial, if I insist on systematic economy in the administration of the Government. All needless expenditure must be lopped off. Our swollen appropriations must be compressed. Extravagance and recklessness, so natural during a period of war, must give way to moderation and thrift. All this without any denial of what is just or beneficent. The rule should be economy without niggardliness. Always there must be a good reason for whatever we spend. Every dollar, as it leaves the National Treasury, must be able to exhibit its passport. Doubtless the army and navy can be further reduced without detriment to the public service. Beyond this great saving there should be a constant watchfulness against those schemes of public plunder, great and small, from which the Nation has latterly suffered so much. All these things are so plain as to be little more than truisms.

Another help will be found in the simplification of our system of taxation, so that it shall be less complex and shall apply to fewer objects. In Europe taxation has become a science, according to which the largest possible amounts are obtained at the smallest possible inconvenience. Instead of sweeping through all the highways and byways of life, leaving no single thing unvisited, the English system has a narrow range and

visits a few select articles only. I see no reason why we should not profit by this example, much to the convenience of the Government and of the citizen. The tax-gatherer will never be a very welcome guest, but he may be less of an intruder than now. A proper tax on two articles, whiskey and tobacco, with proper securities for its collection, would go far to support the Government.

Still another agency will be found in some proper scheme for a diminution of the interest on our national debt, so far as this can be done without a violation of Public Faith; and this brings me to the very bill now before the Senate.

All are anxious to relieve the country from recurring liabilities, which come round like the seasons. How can this be done best? First, by the strict performance of all existing engagements, so that the Public Faith shall be our inseparable ally; and, secondly, by funding the existing debt in such ways as to provide a reduced rate of interest. A longer term would justify a smaller interest. There may be differences as to the form of the substitute, but it would seem as if something of this kind must be done.

Immediately after the close of the war, as the smoke of battle was disappearing, but before the national ledger was sufficiently examined to justify a comparison between liabilities and resources, there was a generous inclination to proceed at once to the payment of the national debt. Volunteers came forward with their contributions for this purpose, in the hope that the generation which suppressed the Rebellion might have the added glory of removing this great burden. This ardor

was momentary. It was soon seen that the task was too extensive, and that it justly belonged to another generation, with aggrandized population and resources, in presence of which the existing debt, large to us, would be small. Here the census has its instructive lesson. According to the rate of increase in past years, our population will advance in the following proportion: —

In 1870, ...	42,323,341
In 1880, ...	56,967,216
In 1890, ...	76,677,872
In 1900, ...	103,208,415
In 1910, ...	138,918,526

The resources of the country, already so vast, will swell in still larger proportions. Population increasing beyond example, improved systems of communication expanding in every direction, and the mechanical arts with their infinite activities old and new, — all these must carry the Nation forward beyond any present calculation, so that the imagination tires in the effort to grasp the mighty result. Therefore to the future we may tranquilly leave the final settlement of the national debt, meanwhile discharging our own incidental duty, so that the Public Faith shall be preserved.

Here is a notable difference between the United States and other countries, where population and resources have arrived at such a point that future advance is very gradual. With us each decade is a leap forward; with them it marks a gradation sometimes scarcely appreciable. This difference must not be forgotten in the estimate of our capacity to deal with a debt larger than that of any European power except England. But we must confess our humiliation, as we find that our debt,

with its large interest in coin, secured by mortgage on the immeasurable future of the Nation, is less regarded abroad than the English debt, with its smaller interest and its more limited security. Our sixes will command only seventy-four per cent. in the market of London, while the three per cent. consols of England are freely bought at ninety-four per cent. One of our bonds brings twenty per cent. less than an English bond, although the interest on it is one hundred per cent. more. I know no substantial reason for this enormous difference, except in the superior credit established by England. With the national credit above suspicion, our debt must stand as well, and, as our multiplying resources become known, even better still. Thus constantly are we brought to the same lesson of Public Faith.

In spite of the general discredit of our national stocks abroad, Massachusetts fives payable in 1894 sell at the nominal price of 84, with the pound sterling at $4.44, equal to 91½ in our gold, with the pound sterling at $4.83. There can be no other reason for this higher price than the superior credit enjoyed by Massachusetts; and thus again is Public Faith exalted. Why should not the Nation, with its infinite resources, surpass Massachusetts?

The bill before us proposes a new issue of bonds, redeemable in coin after twenty, thirty, and forty years, with interest at five per cent., four and one half per cent., and four per cent., in coin, exempt from State or municipal taxation, and also from national taxation, except the general tax on income, — these bonds to be used exclusively for the conversion of an equal amount of the interest-bearing debt of the United States, except

the existing five per cent. bonds and the three per cent. certificates. These proposed bonds have the advantage of being explicit in their terms. The obligations of the Government are fixed clearly and unchangeably beyond the assaults of politicians.

A glance at the national debt will show the operation of this measure. The sum-total on the 1st of February, 1868, according to the statement from the Treasury, was $2,514,315,373, being, in round numbers, twenty-five hundred millions. Out of this may be deducted legal-tender and fractional notes, as currency, amounting to $388,405,565, and several other smaller items. The following amounts represent the portions of debt provided for by this bill: —

Six per cent., due 1881, . . .	$ 283,676,600
Six per cent., five-twenties, . . .	1,398,488,850
Seven and three tenths Treasury notes, convertible into five-twenty bonds at maturity, ...	214,953,850
	$1,897,119,300

This considerable sum may be funded under the proposed bill.

If this large portion of the national debt, with its six per cent. interest in coin, can be funded at a less interest, there will be a corresponding relief to the country. But there is one way only in which this can be successfully accomplished. It is by making the Public Faith so manifest that the holders will be induced to come into the change for the sake of the longer term. All that is done by them must be voluntary. Every holder must be free to choose. He may prefer his short bond at six per cent., or a long bond at five per

cent., or a longer at four and one half per cent., or a still longer at four per cent. This is his affair. There must be no compulsion. Any menace of compulsion will defeat the transaction. It will be nothing less than Repudiation, with a certain loss of credit, which no saving of interest can repay. You must continue to borrow on a large scale; but who will lend to the repudiator, unless at a destructive discount? Any reduction of interest without the consent of the holders will reduce your capacity to borrow. A forced reduction of interest will be like a forced loan. While seeming to save interest, you will lose capital. Do not be deceived. Any compulsory conversion is only another form of Repudiation. It is tantamount to this declared crime. It is the same misdeed, taking still another shape, — as Proteus was the same heathen god in all his various transformations. It is Repudiation under an *alias*.

Happily the bill before us is free from any such damning imputation. The new bonds are authorized; but the holders of existing obligations are left free to exercise their judgment in making the change. I am assured by those who, from practical acquaintance with business, ought to know, that these bonds will be rapidly taken for the five-twenties.

The same bill, in its second section, sets apart $135,000,000 annually to the payment of the interest and the reduction of the principal of the national debt; and this is to be in lieu of a sinking fund. This is an additional security. It is another assurance of our determination to deal honestly.

The third section of the same bill is newer in its provisions, and, perhaps, more open to doubt. But, though uncertain with regard to it in the beginning, I have

found that it commended itself on careful examination. On its face it provides for a system of conversion and reconversion. The holder of lawful money to the amount of $1,000, or any multiple of $1,000, may convert the same into the funded debt for an equal amount; and any holder of the funded debt may receive for the same at the Treasury lawful money, unless the notes then outstanding shall be equal to $400,000,000. If bonds in the funded debt shall be worth more than greenbacks, the latter would be converted into bonds according to the ordinary laws of trade. The latest relation of these two is as follows: $100 greenbacks equal seventy-one dollars gold; $100 five per cent. equal seventy-six dollars gold. If the greenbacks are convertible into the five per cent., they will, of course, be converted while the above relation continues. This must be so long as the national credit is maintained abroad and the demand for our securities continues there. By this process our greenbacks will be gradually absorbed, and those that are not absorbed will be lifted in value. It would seem as if bonds and greenbacks must both gain from this business, and with them the country must gain also. Here would be a new step to specie payments.

The bill closes with a provision authorizing contracts in coin, instead of greenbacks, according to the agreement of parties. This authority is in harmony with the other provisions of the bill, and is still another step toward specie payments.

I am now brought to the last branch of this discussion, in which all the others are absorbed: I mean the necessity of specie payments, or, in other words, the necessity of coin in the place of inconvertible paper.

Other things are means to this end: this is the end itself. Until this is accomplished, Financial Reconstruction exists in aspiration only, and not in reality.

The suspension of specie payments was originally a war measure, like the suspension of the *Habeas Corpus*. It was so declared by myself at the time it was authorized. Pardon me, if I quote my own words in the debate on the bill: —

"It is a discretion kindred to that under which the *Habeas Corpus* is suspended, so that citizens are arrested without the forms of law, — kindred to that under which an extensive territory is declared to be in a condition of insurrection, so that all business with its inhabitants is suspended, — kindred to that, which unquestionably exists, to obtain soldiers, if necessary, by draft or conscription instead of the free offering of volunteers, — kindred to that under which private property is taken for public uses, — and kindred, also, to that undoubted discretion which sanctions the completest exercise of the transcendent right of self-defence."[1]

As a war measure, it should cease with the war, or so soon thereafter as practicable. It should not be continued a day beyond positive exigency. While the war lasted, it was a necessity, as the war itself. Its continuance now prolongs into peace this belligerent agency, and projects its disturbing influence into the most distant places. Like war, whose greatest engine it was, it is the cause of incalculable evil. Like war, it troubles the entire Nation, deranges business, and demoralizes the people. As I hate war, so do I hate all its incidents, and long to see them disappear. Already in these remarks I have pictured the financial anarchy of our country, the natural reflection of the political; but the strongest il-

[1] Speech in the Senate, February 13, 1862: *ante*, Vol. VI. p. 343.

lustration is in a disordered currency, which is present to everybody with a dollar in his pocket.

The derangement of business may be seen at home and abroad. It is not merely derangement; it is dislocation. Everything is out of joint. Business has its disease also, showing itself in opposite conditions: shrunk at times, as with paralysis; swollen at times to unhealthy proportions, as with *elephantiasis*. The first condition of business is stability, which is only another form of security; but this is impossible, when nobody can tell from day to day the value of the currency. It may change in a night. The reasonable contract of to-day may become onerous beyond calculation to-morrow. There is no fixed standard. The seller is afraid to sell, the buyer afraid to buy. Nobody can sell or buy a farm, nobody can build or mortgage a house, except at an unnatural hazard. Salaries and all fixed incomes suffer. The pay of every soldier in the army, every sailor in the navy, every office-holder from the President to the humblest postmaster, is brought under this tyrannical influence. Harder still, innocent pensioners, wards of the Nation, must bear the same doom. Maimed soldiers, bereaved widows, helpless orphans, whose cup is already full, are compelled to see their scanty dole shrink before their sight till it seems ready to vanish in smoke.

A greenback is a piece of paper with a promise on its face and green on its back, declared to be money by Act of Congress, but which the Government refuses to pay. It is "failed paper" of the Government. The mischief of such a currency is everywhere, enveloping the whole country and penetrating all its parts. It covers all and enters all. It is a discredit to the national name, from which the Nation suffers in whole and in detail. It

weakens the Nation and hampers the citizen. There is no national enterprise which it does not impede. The Pacific Railroad feels it. There is not a manufacture or business which does not feel it also. There is not a town, or village, or distant place, which it does not visit.

A practical instance will show one way in which individuals suffer on an extensive scale, being generally those who are least able. I follow an ingenious merchant, Mr. Atkinson, of Boston, whose figures sustain his conclusion, when I insist that our present currency, from its unstable character, operates as an *extra* tax of more than one hundred millions annually on the labor and business of the country; and this vast sum is taken from the pockets of the people, not for the support of the Government, but to swell the unreported fund out of which the excesses of the present day are maintained. There are few business men who would not put the annual loss in their affairs, from the fluctuation in the currency, somewhere from one to five per cent. One per cent. is the lowest. Mr. Hazard, of Rhode Island, puts it at two per cent. Now the aggregate sales in the fiscal year ending June, 1867, were over eleven thousand millions ($11,000,000,000) in currency, excluding sales of stocks or bonds. One per cent. on this prodigious amount represents a tax of one hundred and ten millions, paid annually by consumers, according to their consumption, and not in any degree according to their ability. This is one instance only of the damages annually paid on account of our currency. If we estimate the annual tax at more than one per cent., the sum-total will be proportionally larger. Even at the smallest rate, it is many millions more than all the annual expenses of our Government immediately preceding the Rebellion.

Fluctuations in the measure of value are as inconvenient and fatal as fluctuations in the measures of length and bulk. A dollar which has to-day one value and to-morrow another is no better than a yard which has to-day one length and another to-morrow, or a bushel which has to-day one capacity and another to-morrow. It is as uncertain as "Equity" measured by the varying foot of successive chancellors, sometimes long and sometimes short, according to the pleasant illustration of Selden in his "Table-Talk." Such fluctuations are more than a match for any prudence. Business is turned into a guess, or a game of hazard, where the prevailing anarchy is overruled by accident:—

> "Chaos umpire sits,
> And by decision more embroils the fray
> By which he reigns; next him high arbiter
> Chance governs all."

In such a condition of things the gamblers have the advantage. The stock exchange becomes little better than a faro bank. By such scenes the country is demoralized. The temptation of excessive gains leads from the beaten path of business. Speculation without money takes the place of honest industry, extending from the stock exchange everywhere. The failed paper of the Government teaches the lesson of bankruptcy. The Government refuses to take up its notes, and others do likewise. These things cannot be without a shock to public morals. Honesty ceases to be even a policy. Broken contracts prepare the way for crime, which comes to complete the picture.

Our foreign commerce is not less disturbed; for here we are brought within the sphere of other laws than our own. Gold is the standard of business throughout the

civilized world. Until it becomes again the standard among us, we are not, according to the familiar phrase of President Lincoln, in "practical relation" with the civilized world. We are States out of the great Union. Our currency has the stamp of legality at home, but it is worthless abroad. In all foreign transactions we are driven to purchase gold at a premium, or to adopt a system of barter which belongs to the earlier stages of commerce. Corn, wheat, and cotton are exchanged for the products we desire, and this traffic is the coarse substitute for that refined and plastic system of exchanges which adapts itself so easily to all the demands of business. Commerce with foreign powers is prosecuted at an incalculable disadvantage. Our shipping, which in times past has been the pride of the Nation, whitening every sea with its sails, is reduced in number and value. Driven from the ocean by pirate flags during the Rebellion, it cannot struggle back to its ancient supremacy until the accustomed laws of trade once more resume their rule.

There are few who will deny the transcendent evil which I have set forth. There are few who will advocate inconvertible paper as currency. How shall the remedy be applied? On this question, so interesting to the business and good name of the country, there are theories without number, — some so ingenious as to be artificial rather than natural. What is natural is simple; and I am persuaded that our remedy must be of this character.

The legal-tender note, which we wish to expel from our currency, has two different characters: first, as mere currency, for use in the transactions of business; and,

secondly, as real value, from the assurance that ultimately it will be paid in coin, according to its promise. These two different characters may be sententiously expressed as *availability* and *convertibility*. The notes are now available without being convertible. Our desire is to make them convertible, — in other words, the equivalent of coin in value, dollar for dollar. On the 1st of June last past these notes were $388,675,802 in amount.

Discarding theories, however ingenious, and following Nature, I call attention to a few practical points, before reverting to those cardinal principles applicable to this subject, from which there can be no appeal.

First. The present proposition for funding is an excellent measure for this purpose, being at once simple and practical: not that it contains any direct promise for the redemption of our currency, but because it places the national debt on a permanent footing at a smaller interest than is now paid. By this change three things essential to financial reconstruction are promoted: economy, stability, and national credit. With these once established, specie payments cannot be long postponed.

Secondly. Another measure of immediate value is *the legalization of contracts in coin,* so that henceforth all agreements made in coin may be legally enforced in coin or its equivalent. This would establish specie payments wherever parties desired, and to this extent begin the much-desired change. Contracts in coin would increase and multiply, until the exception became the rule. There would for a time be *two currencies;* but the better must gradually prevail. The essential equity of the new system would be apparent, while there would be a charm in once more looking upon familiar faces long hidden

from sight, as the hoarded coin came forth. Nor can any possible injury ensue. The legalization is applicable only to future contracts, as the parties mutually agree. Every citizen in this respect would be a law to himself. If he chose in his own business to resume specie payments, he could do so. There would be a voluntary resumption by the people, one by one. But this influence could not be confined to the immediate parties. Beyond the contagion of its example, there would be a positive necessity on the part of the banks that they should adapt themselves to the exigency by the substitution of proper commercial equivalents; and thus again we take another step in specie payments.

Thirdly. Another measure of practical value is *the contraction of the existing currency,* so as to bring it on a par with coin, dollar for dollar. Before alluding to any of the expedients to accomplish this precious object, it is important to arrive at some idea of the amount of currency of all kinds required for the business of the country. To do this, we may look at the currency before the Rebellion, when business was in its normal condition. I shall not occupy space with tables, although they are now before me, but content myself with results. From the official report of the Treasury it appears that on the 1st of January, 1860, the whole active circulation of the country, including bank circulation, bank deposits available as currency, specie in bank, specie in Treasury, estimated specie in circulation, and deducting reserves, amounted to $542,097,264. It may be assumed that this sum-total was the amount of currency required at the time. From the same official tables it appears that on the 1st of October, 1867, the whole active circulation of the country, beginning with greenbacks and

fractional currency, and including all the items in the other account, amounted to $1,245,138,193. Thus from 1860, when the currency was normal, to 1867, some time after the suspension of specie payments, there was an increase of one hundred and thirty per cent. Omitting bank deposits for both years, the increase was one hundred and forty-six per cent. Making due allowance for the increase of population, business, and Government transactions, there remains a considerable portion of this advance which must be attributed to the abnormal condition of the currency. I follow various estimates in putting this at sixty or seventy per cent., representing the difference of prices at the two different periods, and the corresponding excess of currency above the requirements of the country. Therefore, for the reduction of prices, there must be a reduction of the currency; and this must be to the amount of $300,000,000. So it seems, unless these figures err.

Against the movement for contraction, which is commended by its simplicity and its tendency to a normal condition of things, we have two adverse policies, — one, the stand-still policy, and the other, worse yet, the policy of inflation. By the first the currency is left *in statu quo*, — stationary, — subject to the influence of other conditions, which may operate to reduce it. Better stand still than move in a wrong direction. By the latter the currency is enlarged at the expense of the people, — being at once a tax and a derangement of values. You pamper the morbid appetite for paper money, and play the discarded part of John Law. You blow up a bladder, without thinking that it is nothing but a bladder, ready to burst. As the volume of currency is increased, the purchasing power of each dollar is reduced in pro-

portion. As you add to the currency, you take from the dollar. You do little more than mark your goods at higher prices, and imagine that they have increased in value. Already the price is too high. Do not make it higher. Already the currency is corrupted. Do not corrupt it more. The cream has been reduced to skimmed milk. Do not let it be reduced to chalk and water. Let there be national cream for all the people.

Obviously any contraction of the currency must be conducted with caution, so as to interfere as little as possible with existing interests. It should be understood in advance, so that business may adapt itself to the change. Once understood, it must be pursued wisely to the end. I call attention to a few of the expedients by which this contraction may be made.

1. Any holder may have liberty to fund his greenbacks in bonds, as he may desire; so that, as coin increases, they will be merged in the funded debt, and the currency be reduced in corresponding proportion.

2. Greenbacks, when received at the Treasury, may be cancelled, or they may be redeemed directly, so far as the coin on hand will permit.

3. Greenbacks may be converted into compound-interest notes, to be funded in monthly instalments, running over a term of years, thus reaching specie payments within a brief period.

4. Another expedient, more active still, is the application of the coin on hand to the payment of greenbacks at a given rate, — say $ 6,000,000 a month, — selecting for payment those holders who present the largest amount of five-twenties for conversion into the long bonds at a low rate of interest, or shall pay the highest premium on such bonds.

I mention these as expedients, having the authority of financial names, calculated to operate in the same direction, without violent change or spasmodic action. Under their mild and beneficent influence the currency would be gradually reduced, so that the final step, when taken, would be hardly felt. With so great an object in view, I do not doubt its accomplishment at an early day, if the Nation only wills it. "Where there is a will, there is a way"; and never was this proverb truer than on this occasion. To my mind it is clear, that, when the Nation wills a currency in coin, then must this victory over the Rebellion be won,— provided always that there is no failure in those other things on which I have also dwelt as the *conditions precedent* of this final victory.

How vain it is to expect Financial Reconstruction until Political Reconstruction has been completed I have already shown. How vain to expect specie payments until the Nation has once more gained its natural vigor, and it has become *one* in reality as in name! Let this be, and the Nation will be like a strong man, in the full enjoyment of all his forces, coping with the trials of life.

There must also be peace within our borders, so that there shall be no discord between President and Congress. Therefore, so long as Andrew Johnson is President, the return to specie payments is impossible. So long as a great party, called Democratic, better now called Rebel, wars on that Political Reconstruction which Congress has organized, there can be no specie payments. So long as any President, or any political party, denies the Equal Rights of the freedman, it is vain to expect specie payments. Whoso would have equity

must do equity; and now, if you would have specie payments, you must do this great equity. The rest will follow. When General Grant said, "Let us have peace," he said also, "Let us have specie payments." Among all the blessed gifts of peace there is none more certain.

Nor must it be forgotten that there can be no departure in any way from the requirements of Public Faith. This is a perpetual obligation, complete in all respects, and just as applicable to the freedman as to the bond-holder. Repudiation in all its forms, direct or indirect, whether of the freedman or the bond-holder, must be repudiated. The freedman and bond-holder are under the same safeguard, and there is the same certain disaster from any repudiation of either. Unless the Public Faith is preserved inviolate, you cannot fund your debt at a smaller interest, you cannot convert your greenbacks, you cannot comply with the essential terms of Reconstruction. Amid all surrounding abundance you are poor and powerless, for you are dishonored. Do not say, as an apology, that all should have the same currency. True as this may be, it is a cheat, when used to cover dishonor. The currency of all should be coin, and you should lift all the national creditors to this solid platform rather than drag a single citizen down. A just Equality is sought by levelling up instead of levelling down. In this way the national credit will be maintained, so that it will be a source of wealth, prosperity, and renown.

Pardon me, if now, by way of recapitulation, I call your attention to three things in which all others centre. The first is the *Public Faith.* The second is the *Public Faith.* The third is the *Public Faith.* Let these be sacredly preserved, and there is nothing of power or

fame which can be wanting. All things will pay tribute to you, even from the uttermost parts of the sea. All the sheaves will stand about, as in the dream of Joseph, and make obeisance to your sheaf. Good people, especially all concerned in business, whether commerce, banking, or labor, our own compatriots or the people of other lands, will honor and uphold the nation which, against all temptation, keeps its word.

NO REPRISALS ON INNOCENT PERSONS.

SPEECH IN THE SENATE, ON THE BILL CONCERNING THE RIGHTS OF AMERICAN CITIZENS, JULY 18, 1868.

THE Senate had under consideration the Bill concerning the Rights of American Citizens in Foreign States, which had already passed the House of Representatives. As it came from the House it contained the following section: —

"SEC. 3. *And be it further enacted,* That, whenever it shall be duly made known to the President that any citizen of the United States has been arrested and is detained by any foreign Government, in contravention of the intent and purposes of this Act, upon the allegation that naturalization in the United States does not operate to dissolve his allegiance to his native sovereign, or if any citizen shall have been arrested and detained, whose release upon demand shall have been unreasonably delayed or refused, *the President shall be, and hereby is, empowered to suspend, in part or wholly, commercial relations with the said Government, or, in case no other remedy is available, to order the arrest and to detain in custody any subject or citizen of such foreign Government who may be found within the jurisdiction of the United States, and who has not declared his intention to become a citizen of the United States, except ambassadors and other public ministers and their domestics and domestic servants; and the President shall without delay give information to Congress of any proceedings under this Act.*"

Mr. Sumner reported an amendment, to strike out the words in Italic authorizing the suspension of commercial relations and reprisals on persons, and substitute therefor these words: —

"It shall be the duty of the President forthwith to report to Congress all the circumstances of any such arrest and detention, and any proceedings for the release of the citizen so arrested and detained, that Congress may take prompt action to secure to every citizen of the United States his just rights."

On this amendment Mr. Sumner spoke as follows.

MR. PRESIDENT, — Before entering upon this discussion, I wish to read a brief telegram, which came by the cable last evening, as follows: —

"LONDON, *July* 17. — In the House, last evening, Stanley, the Secretary of Foreign Affairs, made an important statement in answer to a question asking for information. In reply, he said he had already sent to the United States Government a note on the matter of Naturalization, the substance of which was, that the British ministry was ready to accept the American views of the question. He therefore thought a misunderstanding between the two nations impossible."

Add to this important information the well-known fact, that the United States have already ratified treaties with North Germany and Bavaria, and that we are engaged in negotiating treaties with other powers, for the settlement of this vexed question, and we may surely approach this discussion without any anxiety, except for the honor of our country.

Permit me to say, at the outset, that the declared object of the present bill is all lost in certain special features, which are nothing less than monstrous, and utterly unworthy of a generous Republic hoping to give an example to mankind. Surely, Sir, it is noble to reach out and protect the rights of the citizen at home and abroad; but no zeal in this behalf should betray us into conduct which cannot be regarded without a blush.

This bill proposes to confer upon the President prodigious powers, such as have never been lavished before in our history. They are without precedent. On this account alone they should be considered carefully; and they should not be granted, unless on good reason. If it

be shown that they are not only without precedent, but that they are inconsistent with the requirements of modern civilization, that they are of evil example, and that they tend directly to war, — then, on this account, we should hesitate still more before we venture to grant them. Not lightly can a nation set itself against the requirements of civilization; not lightly can a nation do an act of evil example; not lightly can a nation take any step toward war. The whole business is solemn. Nothing graver could challenge the attention of the Senate.

Two powers are conferred upon the President: first, to suspend commercial relations with a foreign government, and, secondly, to arrest and detain in custody any subject of a foreign government found within the jurisdiction of the United States. The suspension of commercial relations, and the arrest of innocent foreigners, simply at the will of the President, — these are the two powers. It would be difficult to imagine greater.

We have had in our own history the instance of an embargo, when all our merchant ships were kept at home and forbidden to embark in foreign commerce. That measure was intended to save our commerce from insult and our sailors from impressment. This was done by Act of Congress. I am not aware of any instance, in our own history or in the history of any other country, where there has been a suspension of commercial relations with any foreign power, unless as an act of war. The moment war is declared, there is, from the fact of war, a suspension of commercial relations with the hostile power. Commerce with that power is impossible, and there can be no contract even

between the citizens or subjects of the two powers. But this is war. It is now proposed to do this same thing and to call it peace. The proposition is new, absolutely new. Not an instance of history, not a phrase in the Law of Nations, sanctions it. I need not say how little congenial it is with the age in which we live. The present object of good men is to make war difficult, if not impossible. Here is a way to make war easy. To the President is given this alarming power. In Europe war proceeds from the sovereign: in England, from the Queen in Council; in France, from Louis Napoleon. This is according to the genius of monarchies. By the Constitution of our Republic it is Congress alone that can declare war. And yet by this bill One Man, in his discretion, may do little short of declaring war. He may hurl one of the bolts of war, and sever the commercial relations of two great powers. Consider well what must ensue. Suppose the bolt is hurled at England. All that various commerce on which so much depends, all that interchange of goods which contributes so infinitely to the wants of each, all that shipping and all those steamers traversing the ocean between the two, all the multitudinous threads of business by which the two peoples are woven together, warp and woof, as in a mighty loom, — all these must be severed.

The next power conferred on the President is like unto the first in its abnormal character. It is nothing less than authority, in his discretion, to make reprisals, by seizing innocent foreigners happening to be in the United States. The more this is considered, the more it must be regarded with distrust.

Reprisals belong to the incidents of war in the earlier

ages, before civilization had tempered the rudeness of mankind. All reprisals are of doubtful character. Reprisals on persons are barbarous. I do not say, that, according to the received rights of war, some terrible occasion may not arise even for this barbarous agency; but I insist that it is frowned upon by all the best authorities even in our own country, that it is contrary to enlightened reason, and that it is utterly without any recent example. Admitting that such reprisals are not entirely discarded by writers on the Law of Nations, they are nevertheless condemned. By the rights of war, as once declared, the lives of prisoners taken on the field of battle were forfeit. Early history attests the frequency of this bloody sacrifice. Who now would order the execution of prisoners of war? The day has passed when any such outrage can be tolerated. But it is hardly less barbarous to seize innocent persons whom business or pleasure has brought within your peaceful jurisdiction, under the guaranty of the Public Faith.

I am unwilling to occupy time on a matter which is so clear in the light of modern civilization, and of that enlightened reason which is the handmaid to civilization. And yet the present effort will justify me in exposing the true character of reprisals, as seen in the light of history.

Reprisals were recognized by the Greeks, but disowned by the Romans. According to Bynkershoek, who is so much quoted on the Law of Nations, "there is no instance of such wickedness in the history of that magnanimous people; neither do their laws exhibit the least trace of it." [1] This is strong language, and is in itself a condemnation of this whole agency. It is of the

[1] Quæstiones Juris Publici, tr. Du Ponceau, Lib. I. Cap. 24, p. 182.

more weight, as the author is our austerest authority on questions of the Law of Nations, giving to the rights of war the strongest statement. According to him, reprisals are nothing less than "wickedness" (*improbitas*), and unworthy of a magnanimous people. During the Middle Ages, and afterwards, reprisals were in vogue; but they never found favor. They have been constantly reprobated. Even when formally sanctioned, they have been practically excluded by safeguards and conditions. In a treaty between Cromwell and the States-General there was a stipulation against reprisals, "unless the prince whose subject shall conceive himself to have been injured shall first lay his complaint before the sovereign whose subject is supposed to have committed the tortious act, and *unless that sovereign shall not cause justice to be rendered to him within three months after his application.*"[1] This stipulation was renewed under Charles the Second.[2] The same principle was declared by the Grand Pensionary, De Witt, who, in the name of the United Provinces, protested, "that reprisals cannot be granted, *except in case of an open denial of justice*," and "that, even in case of a denial of justice, a sovereign cannot empower his subjects to make reprisals, *until he has repeatedly demanded justice for them.*"[3] A similar rule was also declared in the famous letter to the King of Prussia, in the case of the Silesian loan, written by Murray, afterward Lord Mansfield, and much praised by Montesquieu and by Vattel.[4] Here it is said: "The Law of Nations, founded upon justice, equity, convenience, and the reason of the thing, and confirmed by long

[1] Bynkershoek, Quæst. Jur. Pub., tr. Du Ponceau, Lib. I. Cap. 24, p. 185.

[2] Ibid.

[3] Halleck, International Law, Ch. XII. § 29, p. 310.

[4] Wheaton, Elements of International Law, ed. Lawrence, (Boston, 1863,) p. 528, note.

usage, does not allow of reprisals, except in case of violent injuries, directed or supported by the State, and justice absolutely denied, *in re minime dubia*, by all the tribunals, and afterwards by the prince."[1] This is clear and strong. I might quote authorities without end to the same point. I content myself with adding the words of General Halleck, who, after saying, in his admirable manual, that "reprisals bring us to the awful confines of actual war," proceeds to lay down the rule, that reprisals, even on property, can be only "where justice has been plainly denied or most unreasonably delayed."[2] This rule commends itself as proper and just. It is your duty to apply it on the present occasion. But, in the face of the authorities in our own country, judges, jurists, publicists, and commentators, in long array, according to whom our own claim of allegiance is coincident with that of England, — and then, again, in face of the well-known and much-heralded disposition of foreign powers, including England, to settle this whole question by treaty, is it not absurd to say that here is a case for reprisals of any kind?

In the early days reprisals were directed against persons as well as property. Even against property it was done with hesitation, only in cases free from all doubt, and after ample appeal to the sovereign for justice. Against persons it was done very rarely. Grotius, our greatest master, who brought the rules of International Law to the touchstone of reason, asserts that all reprisals are vindicated by custom rather than by Nature. His language is, that this rule "is not

[1] Bynkershoek, Quæst. Jur. Pub., tr. Du Ponceau, Lib. I. Cap. 24, p. 188, note.

[2] International Law, Ch. XII. § 11, p. 297.

indeed authorized by Nature, but generally received by custom." [1] Since then the tendency has been to a constant mitigation of this pretension, even as regards property. Without burdening this discussion with cases, which are numerous, I give a summary of Wheaton in these words: "It appears to be the modern rule of international usage, that property of the enemy found within the territory of the belligerent state, or debts due to his subjects by the Government or individuals, at the commencement of hostilities, are not liable to be seized and confiscated as prize of war." [2] This rule, which is applicable to the condition of things on the breaking out of war, attests the care with which the modern Law of Nations watches the rights of individuals, and how it avoids making them suffer. Thus even debts are not liable to seizure. How much more should an innocent person be exempt from any such outrage!

It is when we consider the modern rule with regard to persons, instead of property, that we are impressed still more by its benignity. Here I quote, first a British authority, and then an American. Mr. Phillimore, the author of the very elaborate and candid treatise on the Law of Nations, so full of various learning, after admitting that reprisals, "strictly speaking, affect the persons as well as the goods," proceeds to say, that, "in modern times, however, they have been chiefly confined to goods"; and then adds, in words worthy of consideration now, that "it is to be hoped that the reprisal of persons has fallen, with other unnecessary and unchristian severities, into desuetude; *and certainly, to seize travellers, by way of reprisal, is a breach of the tacit faith pledged to*

[1] De Jure Belli ac Pacis, Lib. III. Cap. II. § v. 2.

[2] Elements of International Law, ed. Lawrence, (Boston, 1863,) Part IV. Ch. I. § 9, p. 529.

them by the State, when they were allowed to enter her borders." [1] The same enlightened conclusion is expressed by Dana, in his excellent notes to Wheaton, as follows: "The right of making reprisals is not limited to property, but extends to persons; *still, the practice of modern times discountenances the arrest and detention of innocent persons strictly in the way of reprisal.*" [2] Thus do British and American publicists concur in homage to a common civilization.

If we look at the reason of the modern rule which spares persons, we shall find it in two different considerations, each of controlling authority: first, that an innocent person cannot be seized in a foreign country without a violation of the Public Faith; and, secondly, that no private individual can be justly held responsible for the act of his Government. On the first head Vattel speaks as follows: "The sovereign who declares war can no more detain the subjects of the enemy who are found in his states at the time of the declaration than he can their effects. *They have come into his dominions on the Public Faith.* In permitting them to enter his territories and continue there he tacitly promised them full liberty and full security for their return." [3] In the same sense Halleck says, "Travellers and passing guests are in general excepted from such liability." [4] Here again Grotius speaks with the authority of a Christian lawgiver, saying that by the Law of Nations there can be no reprisals "on travellers or sojourners." [5]

[1] Commentaries upon International Law, Part IX. Ch. II. § 19, Vol. III. pp. 23, 24.

[2] Wheaton's Elements of International Law, ed. Dana, p. 370, note.

[3] Le Droit des Gens, Liv. III. Ch. 4, § 63.

[4] International Law, Ch. XII. § 16, p. 302.

[5] De Jure Belli ac Pacis, Lib. III. Cap. II. § VII. 2.

The other reason was assigned by Mr. Webster, in his correspondence with the British Government in relation to the "Caroline." The British Government having acknowledged the act of McLeod in burning this vessel as their act, Mr. Webster at once declared, that, after this avowal, the individuals engaged in it could not be held personally responsible, and he added words worthy of memory at this juncture: "The President presumes that it can hardly be necessary to say that the American people, not distrustful of their ability to redress public wrongs by public means, *cannot desire the punishment of individuals, when the act complained of is declared to have been an act of the Government itself.*" [1] Weighty words, by which our country is forever bound. The same principle is adopted by Halleck, in his text-book, when he says, "No individual is justly chargeable with the guilt of a personal crime for the act of the community of which he is a member." [2] All these authorities furnish us the same lesson, and warn against the present proposition. Shall we at the same time violate the Public Faith and wreak a dishonorable vengeance on an innocent traveller or sojourner, making him the scapegoat of his country? Shall we do this outrage to the stranger within our gates?

Another argument may be found in the extent to which reprisal on persons has been discarded by modern precedents. It is denounced, not only by authority, but also by practice. I have already said that the proposition to suspend commercial relations is without

[1] Mr. Webster to Mr. Fox, April 24, 1841: Works, Vol. VI. p. 253. See also Phillimore, International Law, Part IX. Ch. III. § 38, Vol. III. p. 53.

[2] International Law, Ch. XII. § 10, p. 296.

an example in history. The other proposition is without example since the hateful act of the first Napoleon, condemned afterward by himself, when, at the breaking of the short-lived Peace of Amiens, he seized innocent Englishmen who happened to be in France, and detained them as prisoners, precisely as is now proposed under the present bill. Among the numerous victims of this tyrannical decree was Lord Elgin, the father of the late Sir Frederick Bruce, on his return from Constantinople, where he had been ambassador. There was also an ingenious scholar, of feeble health, but exquisite attainments, Joseph Forsyth, author of one of the best books ever written on Italy.[1] He, too, was seized. In the preface to his admirable work his family have recorded the outrage. Read it, if you would know the judgment that awaits such a transaction. There is also another record in the pages of the English historian who has pictured the events of that time.

"This declaration of war was immediately followed by an act as unnecessary as it was barbarous, and which contributed more, perhaps, than any other circumstance to produce that strong feeling of animosity against Napoleon which pervaded all classes of the English during the remainder of the contest. Two French vessels had been captured, under the English letters of marque, in the Bay of Audierne, and the First Consul made it a pretence for ordering the arrest of all the English then travelling in France between the ages of eighteen and sixty years. Under this savage decree, unprecedented in the annals of modern warfare, above ten thousand innocent individuals, who had repaired to France in pursuit of business, science, or amusement, on the faith of the Law of

[1] Remarks on Antiquities, Arts, and Letters, during an Excursion in Italy, in the Years 1802 and 1803.

Nations, which never extended hostilities to persons in such circumstances, were at once thrown into prison, from whence great numbers of them were never liberated till the invasion of the Allies in 1814."[1]

Napoleon himself, at a later day, when reason resumed its sway, condemned the act. In his conversations at St. Helena with Las Cases, he said: "The greater part of these English were wealthy or noble persons, who were travelling for their amusement. The more novel the act was, *the more flagrant its injustice,* the more it answered my purpose."[2] Here, then, was an admission that the act was at once novel and unjust. The generals that surrounded him at the time most reluctantly enforced it. From the Memoirs of the Duchess D'Abrantès, we learn how poignantly her gallant husband, Junot, took it to heart and protested. He was unwilling to have anything to do with such an infamy. Recovering at last from the stupor caused by the order, the brave soldier said: "My General, you know not only my attachment to your person, but my absolute devotion to everything which concerns you. It is that devotion which induces me to hesitate at obeying your orders, before imploring you to take a few hours to reflect on the measure which you have now commanded. . . . . Demand my blood; demand my life; I will surrender them without hesitation; but to ask a thing which must cover us with —— . . . . I am sure, that, when you come to yourself, and are no longer fascinated by those around you, who compel you to violent measures, you

[1] Alison, History of Europe, (Edinburgh, 1843,) Ch. XXXVII. Vol. V. pp. 113, 114.

[2] Mémorial de Sainte-Hélène, Tom. VII. pp. 32, 33. Alison, Vol. V. p. 114.

will be of my opinion."[1] Every word of this earnest expostulation may now be justly addressed to the Senate. You, too, Senators, should you unhappily yield to those who now insist upon violent measures, will regret the surrender. You will grieve that your country has been permitted through you to fall from the great example which it owes to mankind. Save your country; save yourselves.

Suppose the law is passed, and the authority conferred upon the President. Whom shall he seize? What innocent foreigner? What trustful traveller? What honored guest? It may be Mr. Dickens, or Mr. Trollope, or Rev. Newman Hall; or it may be some merchant here on business, guiltless of any wrong and under the constant safeguard of the Public Faith. Permit me to say, Sir, that, the moment you do this, you will cover the country with shame, of which the present bill will be the painful prelude. You will be guilty of a barbarism kindred to that of the Abyssinian king Theodorus. You will degrade the national name, and make it a byword of reproach. Sir, now is the time to arrest this dishonor. See to it by your votes that it is impossible forever.

Sir, it is hard to treat this pretension with composure. Argument, denunciation, and ridicule are insufficient. It must be trampled under foot, so as to become a hissing and a scorn. With all the granting of legislation, it is solemnly proposed that good men shall suffer for acts in which they had no part. Innocence is no excuse against the present pretension. The whole attempt is out of time; it is an anachronism, no better than the revival

[1] Junot, Mme., Duchesse d'Abrantès, Mémoires sur Napoléon, Tom. VI. pp. 398–403. Alison, Vol. V. p. 115, note.

of the *Prügel-knabe*, who was kept at the German courts of former days to receive the stripes which the prince had merited for his misdeeds. Surely, if anybody is to suffer, let it be the offending Government, or those who represent it and share its responsibilities, instead of private persons, who in no way represent their Government, and may condemn it. Seize the ambassador or minister. You will then audaciously violate the Law of Nations. The absurdity of your act will be lost in its madness. In the seizure which is now proposed there will be absurdity to make the world shake with laughter, if for a moment it can cease to see the flagrant cruelty and meanness of your conduct.

A debate ensued, which ran into the next day, in the course of which Mr. Conness, of California, insisted that the striking out of the reprisals clause would impair the efficiency of the bill, and make it nothing but "air." At the close of the debate, immediately before the vote on the amendment, Mr. Sumner summed up his objection as follows: —

My objection to the text of the bill which it is proposed to strike out is, that it is a proposal of unutterable barbarism, which, if adopted, would disgrace this country.

The question, being taken by yeas and nays, resulted, — Yeas 30, Nays 7; as follows: —

Yeas, — Messrs. Anthony, Buckalew, Cattell, Chandler, Cole, Conkling, Corbett, Cragin, Davis, Fessenden, Harlan, Harris, Henderson, Howe, Kellogg, McDonald, Morgan, Morrill of Vermont, Osborn, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Rice, Sumner, Trumbull, Van Winkle, Vickers, Willey, Williams, and Wilson, — 30.

Nays, — Messrs. Conness, Nye, Sprague, Stewart, Thayer, Tipton, and Whyte, — 7.

For the section thus amended, Mr. Williams, of Oregon, moved a substitute; whereupon the debate was resumed, and Mr. Sumner spoke again.

THE amendment of the Senator, and the remarks that he has made, it seems to me, go on a mistaken hypothesis. They accept the idea that there has been some failure on the part of our Government with reference to citizens abroad.

MR. WILSON [of Massachusetts]. Is not that true?

MR. SUMNER. I think it is not true; and if time would allow now, I could go into the evidence and show that it is not true. I have the documents here. But we are entering upon this question to-night with an understanding, almost a compact, that there shall be no debate. I do not wish to break that compact. But here are documents lying on my table containing all the facts of record with regard to every American citizen who has been taken into custody abroad. Examine that record, and you will see how strenuous and steadfast our Government has been.

Permit me to say that the argument of the Senator from Oregon [Mr. WILLIAMS] proceeds on a misunderstanding of the facts. There is no occasion now for any such legislative prompting to the Government of the United States.

MR. WILLIAMS. I should like to ask the Senator a question.

MR. SUMNER. Certainly.

MR. WILLIAMS. Why is it, if everything has been so smooth and so placid upon this subject, that both of the political parties of this country have seen proper to put in their platforms resolutions in reference to the rights of American citizens abroad?

MR. SUMNER. I have not said that things were placid or smooth; but I have said that our Government has been strenuous and steadfast in the maintenance of the rights of American citizens, whether native-born or naturalized; and the record will show the truth of what I say. Where has there been a failure? Has it been in Germany? Read the correspondence, running now over several years, between the United States and the different powers of Germany, and see the fidelity with which the rights of our naturalized citizens have been maintained there.

I wish to be as brief as possible. If the Senator will take the trouble to read the documents on the table, he will see that among all the numerous applications made by the United States to the Government of Prussia, the leading power of Germany, there is hardly an instance where this power did not meet us kindly and generously. I speak according to the record. I have been over every one of these cases; and I must say, as I read them I felt a new gratification in the power of my country, which made itself felt for the protection of its citizens in those distant places, and also a new sense of the comity of nations. A letter went forth from one of our ministers, and though at that time this difficult question of expatriation was still unsettled, yet, out of regard to our country, or out of regard, it might be, sometimes, to the personal character of our minister, the claim was abandoned. You can hardly find an instance ——

MR. CONNESS rose.

MR. SUMNER. Will the Senator let me finish my sentence?

MR. CONNESS. Certainly.

MR. SUMNER. You can hardly find an instance in that voluminous correspondence where the claim has been persisted in on the part of the Prussian Government. The abstract question was left unsettled; but the individual was left free, without claim of allegiance or military service. All this was anterior to the treaty, by which this whole question is happily settled forever.

But it is not my purpose to discuss the conduct of foreign Governments. My simple aim is to show the conduct of our own. That was the point with which I began. I said that it needed no quickening such as the Senator from Oregon proposes to apply. There is no evidence that our Government has not been persistent and earnest for the protection of its citizens abroad, whether native-born or naturalized, and I alluded to Prussia only by way of illustration. Pass that by. We have then the greater and more complex case of England. But I would rather not enter upon this. Here are the documents on my table, the passages all marked, which would illustrate the conduct of the British Government and the British tribunals toward every one of these persons whose names have been brought in question. I do not wish to go into this question. I should be misunderstood; and it is not necessary. I am speaking now of the conduct of our own Government, rather than of the conduct of any other Government. Mark, Sir, my reply to the Senator from Oregon was, that our Government did not need any additional power or any additional impulse to activity in this behalf. Already it has the power to do everything permitted by the Law of Nations, and it ought not to do anything else.

Mr. Conness followed in support of the bill, and to a correction from Mr. Sumner retorted: —

"The honorable Senator would be very quick to demand the interference of all the powers of this Government in behalf of an arrested American citizen, if he were black. But, Sir, those arrested happen to be of another color, — not a color which appeals to his sympathies, but a color that allows him to belittle their arrest and incarceration, — that enables him to say here in the Senate that our Government have done everything that they could do, all that was necessary. It is true in his judgment, I have no doubt; for, if you only write letters, if you only publish and utter productions of the brain, if you only present views, the honorable Senator is satisfied. Those are his means, except when the progress through the thoroughfares of the city or the country of an American citizen of African descent is involved. Then views are at once thrown to the dogs, and he demands the interference of the Government, the police authority; if it be a railroad company, repeal their acts of incorporation! No matter how much capital stands in the way, — it may be $10,000,000 that is affected, — repeal their acts at once! How dare they impiously set up their tyranny over one human being who is stamped with American citizenship? . . . . The law as proposed to be passed under the direction of the honorable Chairman of the Committee on Foreign Relations amounts to nothing. . . . . I hope, without detaining the Senate any longer, that we shall not add to our too great delay upon these questions the offence and insult that the passage of this Act would be as proposed by the Committee.[1]

To this attack Mr. Sumner replied as follows: —

I HESITATE very much to say another word; and yet I think the Senate will pardon me, if I make a brief reply

[1] Congressional Globe, 40th Cong. 2d Sess., Part V. p. 4331.

to the charge, so absolutely unjust, of the Senator from California. He throws upon me the reproach of indifference to foreigners. Sir, I deny the imputation, and challenge comparison on this head with any Senator on this floor. Here I know that I am without blame. Sir, you do not forget that more than ten years ago there was a storm that passed over this country which had a name more familiar than polite: I mean Know-nothingism. It was everywhere, and enveloped my own State. At that time I had the honor of holding the position which I now hold. Did I yield to this storm, when it was carrying all before it? Sir, at that time I went down to Faneuil Hall, and in the presence of one of the largest audiences ever there assembled, and knowing well the prevailing sentiment, I made a speech vindicating the rights of emigrants to our country and promising them welcome. I have that speech here now, and I will read a few sentences from it. This was on the 2d of November, 1855, — nearly thirteen years ago. Pardon me for reading this record of other days; but I am justified by the attacks to which I have been exposed. If any foreign-born citizen is disposed to hearken to the Senator from California impeaching me, I ask him to bear in mind how I stood for his rights at another time, when there were fewer ready to stand for them than now. I read from this forgotten speech, as reported at that time.

Mr. Sumner read the first two paragraphs on the thirteenth page of the pamphlet edition.[1]

Such was my argument for the rights of the foreign-born among us. To all of them I offered such welcome as I could: —

[1] Works, Vol. IV. pp. 78–80.

"There are our broad lands, stretching towards the setting sun; let them come and take them. Ourselves children of the Pilgrims of a former generation, let us not turn from the Pilgrims of the present. Let the home founded by our emigrant fathers continue open in its many mansions to the emigrants of to-day." [1]

Sir, those were the words which I uttered in Faneuil Hall at a time when the opposition to foreigners was scouring over the whole country. Others yielded to that tempest, but I did not yield. All my votes in this Chamber, from the first day that I entered it down to this moment, have been in the same direction, and for that welcome which I thus early announced. Never have I missed an occasion to vote for their protection; never shall I miss any such occasion. I was the first in the Senate to announce the essential incompatibility between the claim of perpetual allegiance and the license of unlimited emigration which we had witnessed, saying that every Irishman or German leaving with the consent of his Government was a living witness to the hollowness of the original pretension. And now I am most anxious to see expatriation a law as well as a fact. If I do not adopt the expedients proposed, it is because I regard them as less calculated to produce the much-desired result than other means equally at hand, to the end that the rights of our naturalized citizens may find adequate safeguard everywhere. The present bill can do little good, and may do harm. It will not protect a single citizen; but it may be a drag on those pending negotiations by which the rights of all will be secured. Too studious of the Law of Nations, perhaps, to be willing to treat it with distrust or neglect, I look to that

[1] Works, Vol. IV. p. 78.

prevailing agency rather than to the more limited instrumentality of Municipal Law. It is the province of Municipal Law to determine rights at home, — how a foreign-born person may be naturalized in our country, — how he may be admitted to all the transcendent privileges of American citizenship; but it belongs to another system of law to determine what shall be his privileges, should he return to the country which gave him birth. We may, by our declarations, by our diplomacy, by our power, do much; but it is by our treaties that we shall fix all these rights in adamant. The Senator seems to have no higher idea than to write them in the fleeting passions of party. My vote will never be wanting to elevate them above all such fitful condition, and to place them under the perpetual sanction of International Law, — the only law which can bind two different powers. Sir, the Senator from California shall not go before me; he shall not be more swift than I; he shall not take one single step in advance of me. Be the person Irish or German or African or Chinese, he shall have from me the same equal protection. Can the Senator say as much?

THE CHINESE EMBASSY, AND OUR RELATIONS WITH CHINA.

SPEECH AT THE BANQUET BY THE CITY OF BOSTON TO THE CHINESE EMBASSY, AUGUST 21, 1868.

THE year 1868 was memorable for the Chinese Embassy, with Hon. Anson Burlingame at its head, which, arriving first at Washington by the way of San Francisco, negotiated a treaty with the United States, and then visited Europe. The abundant hospitality with which it was received throughout the United States was marked at Boston by a distinguished reception and entertainment on the part of the municipal authorities. August 20th, the Embassy was received by Hon. Nathaniel B. Shurtleff, Mayor, and escorted in public procession through the principal streets, and with the customary diplomatic salutes, to the Parker House, where they were lodged as the guests of the city. The next day at noon they were publicly received at Faneuil Hall, which was decorated for the occasion. In the evening they were entertained at a banquet at the St. James Hotel, where were present about two hundred and twenty-five gentlemen, including the City Government.

The company is thus described in the official report: —

"Hon. Nathaniel B. Shurtleff, Mayor, presided. On his right were seated Hon. Anson Burlingame, Chief of the Embassy; His Excellency Alexander H. Bullock, Governor of the Commonwealth; Teh Lao-yeh, English Interpreter attached to the Embassy; Hon. Charles Sumner, Chairman of the Committee on Foreign Relations of the United States Senate; Hon. Caleb Cushing; Major-General Irwin McDowell, U. S. A.; Commodore John Rodgers, U. S. N.; Charles G. Nazro, Esq., President of the Board of Trade. On the left of the Mayor were seated Chih Ta-jin, Associate Minister; Mr. McLeavy Brown, Secretary to the Embassy; Sun Ta-jin, Associate Minister; M. Émile Dechamps, Secretary to the Embassy; Fung Lao-yeh, English Interpreter; Ralph Waldo Emerson, LL.D.; Rev. George Putnam, D. D.; Mr. Edwin P. Whipple.

"Among the other distinguished guests present were: Dr. Oliver Wendell Holmes; Hon. Nathaniel P. Banks, Hon. George S. Boutwell, and Hon.

Ginery Twichell, Members of Congress; Rev. Thomas Hill, D. D., President of Harvard College; Hon. George S. Hillard, United States District Attorney; Hon. George O. Brastow, President of the Senate; Hon. Harvey Jewell, Speaker of the House of Representatives; Brevet Major-General H. W. Benham, and Brevet Major-General J. G. Foster, U. S. Engineer Corps; Major-General James H. Carleton, U. S. A.; Brevet Brigadier-General Henry H. Prince, Paymaster U. S. A.; Major-General James A. Cunningham, Adjutant-General; Hon. Henry J. Gardner, Ex-Governor of the Commonwealth; Hon. Josiah Quincy; Hon. Frederic W. Lincoln, Jr.; Dr. Peter Parker, formerly Commissioner to China; Hon. Isaac Livermore; Sr. Frederico Granados, Spanish Consul; Mr. G. M. Finotti, Italian Consul; Mr. Joseph Iasigi, Turkish Consul; Hon. Marshall P. Wilder, President of the Board of Agriculture; Rev. N. G. Clark, D. D., Secretary of the Board of Foreign Missions; and many of the leading merchants and professional men of Boston."

At the banquet speeches were made by the Mayor, Mr. Burlingame, Governor Bullock, Mr. Sumner, Mr. Cushing, Mr. Emerson, General Banks, Mr. Nazro, and Mr. Whipple.

The Mayor announced as the fifth regular toast, "The Supplementary Treaty with China," and called upon Mr. Sumner to respond. Mr. Burlingame had already said in his speech, while declining any elaborate exposition of the Treaty: "No, Sir, — I leave the exposition of that treaty to the distinguished Senator on my right, who was its champion in the Senate, and who procured for it a unanimous vote."

Mr. Sumner said: —

MR. MAYOR, — I cannot speak on this interesting occasion without first declaring the happiness I enjoy at meeting my friend of many years in the exalted position he now holds. Besides this personal relation, he was also an honored associate in representing the good people of this community, and in advancing a great cause, which he championed with memorable eloquence and fidelity. Such are no common ties.

The splendid welcome now offered by the municipal authorities of Boston is only a natural expression of prevailing sentiments. Here his labors and triumphs began. In your early applause and approving voices he first tasted of that honor which is now his in such

ample measure. He is one of us, who, going forth into a strange country, has come back with its highest trusts and dignities. Once the representative of a single Congressional district, he now represents the most populous nation of the globe. Once the representative of little more than a third part of Boston, he is now the representative of more than a third part of the human race. The population of the globe is estimated at twelve hundred millions; that of China at more than four hundred and sometimes even at five hundred millions.

If in this position there be much to excite wonder, there is still more for gratitude in the unparalleled opportunity it affords. What we all ask is opportunity. Here is opportunity on a surpassing scale, — employed, I am sure, to advance the best interests of the human family; and if these are advanced, no nation can suffer. Each is contained in all. With justice and generosity as the reciprocal rule, — and nothing else can be the aim of this great Embassy, — there can be no limits to the immeasurable consequences. Nor can I hesitate to say that concessions and privileges are of less consequence than that spirit of friendship and good neighborhood, embracing alike the distant and the near, which, once established, renders all else easy.

The necessary result of the present experiment in diplomacy will be to make the countries it visits better known to the Chinese, and also to make the Chinese better known to them. Each will know the other better, and better comprehend that condition of mutual dependence which is the law of humanity. In relations among nations, as in common life, this is of infinite value. Thus far, I fear the Chinese are poorly informed with regard to us. I am sure we are poorly informed

with regard to them. We know them through the porcelain on our tables, with its lawless perspective, and the tea-chest, with its unintelligible hieroglyphics. There are two pictures of them in the literature of our language, which cannot fail to leave an impression. The first is in "Paradise Lost," where Milton, always learned, even in his poetry, represents Satan descending in his flight

> "on the barren plains
> Of Sericana, where *Chineses* drive
> With sails and wind their cany wagons light." [1]

The other is in that admirable "Discourse on the Study of the Law of Nature and Nations," where Sir James Mackintosh, in words of singular felicity, points to "the tame, but ancient and immovable civilization of China." [2] It is for us at last to enlarge these pictures, and to fill the canvas with life.

I do not know if it has occurred to our honored guest that he is not the first stranger who, after sojourning in this distant, unknown land, has come back loaded with its honors, and with messages to the Christian powers. He is not without a predecessor in his mission. There is another career as marvellous as his own. I refer to the Venetian Marco Polo, whose reports, once discredited as the fables of a traveller, are now recognized among the sources of history, and especially of geographical knowledge. Nobody can read them without feeling their verity. It was in the latter part of the far-away thirteenth century that this enterprising Venetian, with his father and uncle, all merchants, journeyed from Venice, by the way of Constantinople, Trebizond on the

[1] Paradise Lost, Book III. 437–439.

[2] Miscellaneous Works, (London, 1851,) p. 170.

Black Sea, and Central Asia, until they reached first the land of Prester John, and then that golden country known as Cathay, where the lofty ruler, Kublaï Khan, treated them with gracious consideration, and employed young Polo as his ambassador. This was none other than China, and the lofty ruler, called the Grand Khan, was none other than the first of its Mongolian dynasty, having his imperial residence in the immense city of Kambalu, or Peking. After many years of illustrious service, the Venetian, with his companions, was dismissed with splendor and riches, charged with letters for European sovereigns, as our Bostonian is charged with similar letters now. There were letters for the Pope, the King of France, the King of Spain, and other Christian princes. It does not appear that England was expressly designated. Her name, so great now, was not at that time on the visiting list of the distant Emperor. Such are the contrasts in national life. Marco Polo reached Venice, on his return, in 1295, at the very time when Dante, in Florence, was meditating his divine poem, and Roger Bacon, in England, was astonishing the age with his knowledge. These were his two greatest contemporaries, constituting with himself the triumvirate of the century.

The return of the Venetian to his native city was attended by incidents which have not occurred among us. Bronzed by long residence under the sun of the East, wearing the dress of a Tartar, and speaking his native language with difficulty, it was some time before his friends could be persuaded of his identity. Happily there is no question on the identity of our returned fellow-citizen; and surely it cannot be said that he speaks his native language with difficulty. A dinner was

spread at Venice as here at Boston, and now, after the lapse of nearly six hundred years, the Venetian dinner still lives in glowing description. Marco Polo, with his companions, appeared first in long robes of crimson satin reaching to the floor, which, when the guests had washed their hands, were changed for other robes of crimson damask, and then again, after the first course, for other robes of crimson velvet, and at the conclusion of the banquet, for the ordinary dress worn by the rest of the company. Meanwhile the other costly garments were distributed among the attendants at the table. In all your magnificence to-night, Mr. Mayor, I have seen no such largess. Then were brought forward the coarse threadbare garments in which they had travelled, when, on ripping the lining and patches with a knife, costly jewels, in sparkling showers, leaped forth before the eyes of the company, who for a time were motionless with wonder. Then at last, says the Italian chronicler, every doubt was banished, and all were satisfied that these were the valiant and honorable gentlemen of the house of Polo. I do not relate this history to suggest any such operation on the dress of our returned fellow-citizen. No such evidence is needed to assure us of his identity.

The success of Marco Polo is amply attested. From his habit of speaking of "millions" of people and "millions" of money, he was known as *Messer Millioni*, or the millionnaire, being the earliest instance in history of a designation so common in our prosperous age. But better than "millions" was the knowledge he imparted, and the impulse he gave to that science which teaches the configuration of the globe and the place of nations on its face. His travels, dictated by him, were repro-

duced in various languages, and, after the invention of printing, the book was multiplied in more than fifty editions. Unquestionably it prepared the way for the two greatest geographical discoveries of modern times, — the Cape of Good Hope, by Vasco da Gama, and the New World, by Christopher Columbus. One of his admirers, a French *savant*, does not hesitate to say, that, "when, in the long series of ages, we seek the three men who, by the magnitude and influence of their discoveries, have most contributed to the progress of geography or the knowledge of the globe, the modest name of the Venetian traveller finds a place in the same line with those of Alexander the Great and Christopher Columbus."[1] It is well known that the imagination of the Genoese navigator was fired by the revelations of the Venetian, and that, in his mind, the countries embraced by his transcendent discovery were none other than the famed Cathay, with its various dependencies. In his report to the Spanish sovereigns, Cuba was nothing else than Zipangu, or Japan, as described by the Venetian, and he thought himself near a Grand Khan, — meaning, as he says, a king of kings. Columbus was mistaken. He had not reached Cathay or the Grand Khan; but he had discovered a new world, destined in the history of civilization to be more than Cathay, and, in the lapse of time, to welcome the Ambassador of the Grand Khan.

The Venetian, returning home, journeyed out of the East, westward; our Marco Polo, returning home, journeyed out of the West, eastward. And yet they both came from the same region: their common starting-

[1] Walckenaër, in the Biographie Universelle, Tom. XXXV. p. 222, art. Polo.

point was Peking. This change is typical of the surpassing revolution under whose influence the Orient will become the Occident. Journeying westward, the first welcome is from the nations of Europe; journeying eastward, the first welcome is from our Republic. It remains that this welcome should be extended, until, opening a pathway for the mightiest commerce of the world, it embraces within the sphere of American activity that ancient ancestral empire, where population, industry, and education, on an unprecedented scale, create resources and necessities on an unprecedented scale also. See to it, merchants of the United States, and you, merchants of Boston, that this opportunity is not lost.

And this brings me, Mr. Mayor, to the Treaty, which you invited me to discuss. But I will not now enter upon this topic. If you did not call me to order for speaking too long, I fear I should be called to order in another place for undertaking to speak of a treaty not yet proclaimed by the President. One remark I will make, and take the consequences. The Treaty does not propose much; but it is an excellent beginning, and, I trust, through the good offices of our fellow-citizen, the honored plenipotentiary, will unlock those great Chinese gates which have been bolted and barred for long centuries. The Embassy is more than the Treaty, because it prepares the way for further intercourse, and helps that new order of things which is among the promises of the Future.

Mr. Burlingame's sudden death, at St. Petersburg, February 23, 1870, arrested the remarkable career he had begun, leaving uncertain what he might have accomplished for China with European powers, and also uncertain the possible influence he might have exercised with the great nation he represented, in opening its avenues of approach, and bringing it within the sphere of Western civilization.

THE REBEL PARTY.

SPEECH AT THE FLAG-RAISING OF THE GRANT AND COLFAX CLUB, IN WARD SIX, BOSTON, ON THE EVENING OF SEPTEMBER 14, 1868.

I FIND a special motive for being here to-night in the circumstance that this is the ward where I was born and have always voted, and where I expect to vote at the coming election. Here I voted twice for Abraham Lincoln, and here I expect to vote for Grant and Colfax. According to familiar phrase, this is my ward. This, also, is my Congressional District. Though representing the Commonwealth in the Senate, I am not without a representative in the other House. Your Congressional representative is my representative. Therefore I confess a peculiar interest in this ward and this district.

In hanging out the national flag at the beginning of the campaign, you follow the usage of other times; but to my mind it is peculiarly appropriate at the present election. The national flag is the emblem of loyalty, and the very question on which you are to vote in the present election is whether loyalty or rebellion shall prevail. It is whether the national flag shall wave gloriously over a united people in the peaceful enjoyment of Equal Rights for All, or whether it shall be dishonored by traitors. This is the question. Under all forms of statement or all resolutions, it comes back to

this. As during the war all of you voted for the national flag, while some carried it forward in the face of peril, so now all of you must vote for it, and be ready to carry it forward again, if need be, in the face of peril.

As loyalty is the distinctive characteristic of our party, so is disloyalty the distinctive characteristic of the opposition. I would not use too strong language, or go beyond the strictest warrant of facts; but I am obliged to say that we cannot recognize the opposition at this time as anything else but the Rebel Party in disguise, or the Rebel Party under the *alias* of Democracy. The Rebels have taken the name of Democrats, and with this historic name hope to deceive people into their support. But, whatever name they adopt, they are the same Rebels who, after defeat on many bloody fields, at last surrendered to General Grant, and, by the blessing of God and the exertions of the good people, will surrender to him again.

I am unwilling to call such a party democratic. It is not so in any sense. It is not so according to the natural meaning of the term, for a Democrat is a friend of popular rights; nor is it so according to the examples of our history, for all these disown the policy of the opposition. Thomas Jefferson was an original Democrat; but he drew with his own hand the Declaration of Independence, which announces that all men are equal in rights, and that just government stands only on the consent of the governed. Andrew Jackson was another Democrat; but he put down South Carolina treason with a strong hand, and gave the famous toast, "The Union, it must be preserved." These were Democrats, representative Democrats, boldly announcing the Equal Rights

of All and the Unity of the Nation. Thus looking at the word, in its natural bearing or in the great examples of our history, we find it entirely inapplicable to a party which denies equal rights and palters with Rebellion itself. Such a party is the Rebel Party, and nothing else; and this is the name by which it should be known.

Look at the history of their leaders, — Rebels all, Rebels all. I mention those only who take an active part. A party, like a man, is known by the company it keeps. What a company! Here is Forrest, with the blood of Fort Pillow still dripping from his hands; Semmes, fresh from the Alabama, glorying in his piracies on our commerce; Wade Hampton, the South Carolina slave-master and cavalry officer of the Rebellion; Beauregard, the Rebel general, who telegraphed for the execution of Abolition prisoners; Stephens, Toombs, and Cobb, a Georgia triumvirate of Rebels; and at the head of this troop is none other than Horatio Seymour of New York, who, without actually enlisting in the Rebellion, dallied with it, and addressed its fiendish representatives in New York as "friends." A party with such leaders and such a chief is the Rebel Party.

Such a party, so filled and permeated with treason, cannot utter any shibboleth of loyalty. Every loyal word must stick in its throat, as "Amen" stuck in the throat of Macbeth, after the murder of his royal guest. Therefore, I say again, let it be called the Rebel Party. This is a truthful designation, stamping upon the party its real character. By this name I now summon it to judgment. If I could make my voice heard over the Republic, it should carry everywhere this just summons. It should go forth from this schoolhouse, traversing the land, echoing from valley to valley, from village to vil-

lage, from town to town, and warning all who love their country against a party which is nothing but a continuation of the Rebellion. How can such a party pretend to hang out the national flag? I do not wonder that its Presidential candidate has cried out in his distress, "Press the financial question!" Yes, press anything to make the country forget the disloyalty of the party, — anything to divert attention from the national flag, which they would dishonor. But on the financial question, as everywhere else, they are disloyal. Repudiation is disloyalty, early taught by Jefferson Davis in his own State, and now adopted by the Rebel Party, North and South.

Here I come back to the point with which I began. Hang out the national flag! It is the flag of our country, our whole country, beaming with all its inseparable stars, and proclaiming in all its folds the strength, the glory, and the beauty of Union. Let that flag be the light to your footsteps. *By this conquer!* And surely you will conquer. The people are not ready to join with Rebels or submit to Rebel yoke. They will stand by the flag at the ballot-box, as they stood by it on the bloody field. History has recorded the triumphant election of Abraham Lincoln, as the representative of Loyalty against Rebellion. Thank God, it will soon make the same joyful record with regard to Grant and Colfax, the present representatives of Loyalty against Rebellion.

Every man must do his duty, each in his way, according to his ability, — some by voice, and others by efforts of a different kind, but all must work and vote. The cause is that of our country and its transcendent future, pictured in the flag. And permit me to remind you

that our Congressional District has obligations it cannot forget. It must be true to itself and to its own example. At the last Presidential election there was a report, which travelled all the way to Washington, that ours was a doubtful district. On the evening of the election, as soon as the result was known, I had the happiness of telegraphing to the President that in this district the majority was some five thousand for himself and Mr. Hooper. It so happened that it was the first despatch received from any quarter announcing the triumph of that great day. On reading it, the President remarked, with his humorous point: "Five thousand majority! If this is a specimen of the doubtful districts, what may we expect of the whole country?" This victory must be repeated. There must be another five thousand majority; and let General Grant, like Abraham Lincoln, measure from our majority the majorities throughout the country, giving assurance that the Rebel Party is defeated and utterly routed in its last desperate struggle. This is Beacon Hill, the highest point of Boston, where in early days were lighted the beacon fires which flashed over the country. The fires which we light on Beacon Hill will be of congratulation and joy.

ENFRANCHISEMENT IN MISSOURI: WHY WAIT?

LETTER TO A CITIZEN OF ST. LOUIS, OCTOBER 3, 1868.

THE following letter appeared in the *St. Louis Democrat.*

BOSTON, October 3, 1868.

DEAR SIR, — I am pained to learn that there can be any question among good Republicans with regard to the enfranchisement of the colored race, especially as declared in the Constitutional Amendment now pending in Missouri. When shall this great question be settled, if not now? Why wait? Why prolong the agony? There is only one way in which it can be settled. Why not at once? All who vote against it only vote to continue the agitation, which will never end except with the establishment of the Equal Rights of All.

Only in this way can the Declaration of Independence be vindicated in its self-evident truths. As long as men are excluded from the suffrage on account of color, it is gross impudence for any nation to say that they are equal in rights. Of course, men are not equal in strength, size, or other endowments, physical or mental; but they are equal in rights, which is what our fathers declared. They are equal before God, equal before the divine law; they should be made equal before human law. Equality before the Law is the true rule.

How can any possible evil result from a rule which is so natural and just? There can be no conflict of races

where there is no denial of rights. It is only when rights are denied that conflict begins. See to it that all are treated with justice, and there will be that peace which is the aspiration of good men. For the sake of peace I pray that this great opportunity be not lost.

I hear a strange cry about the supremacy of one race over another. Of course I am against this with my whole heart and soul. I was against it when it showed itself in the terrible pretensions of the slave-master; and now I am against it, as it shows itself in the most shameful oligarchy of which history has made mention, — an oligarchy of the skin. Reason, humanity, religion, and common sense, all reject the wretched thing. Even if the whites are afraid that the blacks will become an oligarchy and rule their former masters, this is no reason for a continued denial of rights. But this inquietude on account of what is nicknamed "negro supremacy" is as amusing as it is incredible. It is one of the curiosities of history. Occupied as I am at this moment, I should be tempted to put aside all other things and journey to the Mississippi in order to look at a company of whites who will openly avow their fear of "negro supremacy." I should like to see their pallid faces, and hear the confession from their own trembling lips. Such a company of whites would be a sight to behold. Falstaff's sorry troops were nothing to them.

Such foolish fears and foolish arguments cannot prevail against the great cause of Equal Rights. Spite of all obstacles and all prejudices, this truth must triumph. Was it not declared by our fathers? What they declared is a promise perpetually binding on us, their children.

Accept my best wishes, and believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

ISSUES AT THE PRESIDENTIAL ELECTION.

Speech at the City Hall, Cambridge, October 29, 1868.

At the Republican State Convention, held at Worcester, September 9, 1868, of which Hon. George S. Boutwell was President, the following was the last resolution of the platform, which was unanimously adopted: —

"That the public life of the Honorable Charles Sumner, during three terms of service in the Senate of the United States, has fully justified the confidence which has been successively reposed in him; that his eloquent, fearless, and persistent devotion to the sacred cause of Human Rights, as well in its early struggles as in its later triumphs, — his beneficent efforts, after the abolition of Slavery, in extirpating all the incidents thereof, — his constant solicitude for the material interests of the country, — his diligence and success, as Chairman of the Senate Committee on Foreign Affairs, in vindicating the policy of maintaining the just rights of the Government against foreign powers, and at the same time preserving peace with the nations, — all present a public record of rare usefulness and honor; and that his fidelity, experience, and honorable identification with our national history call for his reëlection to the high office in which he has rendered such illustrious service to his country and to mankind."

The report of the *Boston Daily Advertiser* stated that "the reading of the resolutions was accompanied by repeated applause, — the last one, relating to Mr. Sumner, calling forth a perfect tempest of approval."

January 19, 1869, Mr. Sumner was reëlected Senator for the term of six years, beginning with March 4th following, by the concurrent vote of the two Houses of the Legislature. The vote was as follows: —

In the Senate.

Charles Sumner,	37
Josiah G. Abbott,	2

In the House.

Charles Sumner,	216
Josiah G. Abbott,	15
Nathaniel P. Banks,	1

SPEECH.

FELLOW-CITIZENS, — If I have taken little part in the present canvass, you will do me the justice to believe that it is from no failure of interest in the cause for which I have so often pleaded; nor is it from any lukewarmness to the candidates. The cause is nothing less than our country redeemed from peril and dedicated to Human Rights, so as to become an example to mankind. The candidates are illustrious citizens, always loyal to this great cause, both of surpassing merit, and one of unequalled renown in the suppression of the Rebellion. In this simple statement I open the whole case. The cause would commend any candidates, and I might almost add that the candidates would commend any cause.

It is only in deference to my good physician that I have thus far forborne those customary efforts to which I was so strongly prompted; and now I speak in fear of offending against his rules. But I am unwilling that this contest shall close without my testimony, such as it is, and without mingling my voice with that general acclaim which is filling the land.

Indulge me still further while for a moment I allude to myself. The Republican State Convention has by formal resolution presented me for reëlection to the

Senate, so that this question enters into the larger canvass. Meeting my fellow-citizens now, it would not be out of order, I believe, nor should I depart from any of the proprieties of my position, if I proceeded to give you an account of my stewardship during the term of service about to expire. But when I consider that this extends over six busy years, beginning while the Rebellion still raged and continuing through all the anxious period of Reconstruction, — that it embraces nothing less than the Abolition of Slavery, and all the steps by which this transcendent measure was promoted and consummated, also the various efforts for the establishment of Equal Rights, especially in the court-room and at the ballot-box, thus helping the fulfilment of the promises originally made in the Declaration of Independence, — that it embraces, besides, all the infinite questions of taxation, finance, railroads, business and foreign relations, including many important treaties, among which was that for the acquisition of the Russian possessions in North America, — and considering, further, how these transactions belong to the history of our country, where they are already read, I content myself with remarking that in all of them I have borne a part, I trust not unworthy of the honored Commonwealth whose representative I am; and here I invite your scrutiny and candid judgment.

Possibly some of the frequent criticism to which I have been exposed is already dulled by time or answered by events. A venerable statesman, eminent in the profession, once rebuked me for the term *Equality before the Law*, which I had taken from the French, as expressing more precisely than the Declaration of Independence that equality in rights which is all that con-

stitutions or laws can secure. My learned critic had never met this term in the Common Law, or in the English language, and therefore he did not like the innovation. In the same spirit other efforts have been encountered, often with virulence, especially those two fundamentals of Reconstruction, — first, the power of Congress over the Rebel States, whether as territories, or provinces, or as States having no republican government, or, according to the language of President Lincoln, "out of their proper practical relation with the Union,"[1] and, secondly, the necessity of lifting the freedman into Equal Rights, civil and political, so as to make him a part of the body politic. Who can forget the clamor at these two propositions? All this has happily ceased, except as an echo from Rebels and their allies, whose leading part is a protest against the power of Congress and the equal rights of the freedman.

Though formal criticism has tardily died out, there is sometimes a warning against men of "one idea," with a finger-point at myself. Here I meet my accuser face to face. What duty have I failed to perform? Let it be specified. What interest have I neglected? Has it been finance? The "Globe" will show my earnest and elaborate effort at the beginning of the war, warning against an inconvertible currency, and a similar effort made recently to secure the return to specie payments. Has it been taxation, or commerce, or railroads, or business in any of its forms, or foreign relations, with which, as Chairman of the Senate Committee on this subject, I have been particularly connected? On all of these I

[1] Speech on Victory and Reconstruction, April 11, 1865: McPherson's Political History of the United States during the Rebellion, p. 609.

refer to the record. What, then, have I neglected? It is true, that, while bearing these things in mind and neglecting none, I felt it a supreme duty to warn my country against the perils from Slavery, and to insist upon irreversible guaranties for the security of all, especially those freedmen whom we could not consent to sacrifice without the most shameful ingratitude. As the urgency was great, I also was urgent. In season and out of season, at all times, in all places, here at home and in the Senate, I insisted upon the abolition of Slavery, and the completion of this great work by the removal of its whole brood of inequalities, so that it should not reappear in another form. But my earnestness and constancy only imperfectly represented the cause. There could be no excess,— nothing too strong. The Republic was menaced; where was the limit to patriotic duty? Human Rights were in jeopardy; who that had a heart to feel could be indifferent? Nobody could do too much. This was not possible. No wisdom too great, no voice too eloquent, no courage too persevering. Of course, I claim no merit for effort in this behalf; but I appeal to you, my fellow-citizens, that the time for reproach on this account is past. We must be "practical," says the critic. Very well. Here we agree. But, pray, who has been "practical"? Is it those laggards, who, after clinging to Slavery, then denied the power of Congress, and next scouted the equal rights of the freedman? Permit me to say that the "practical" statesman foresees the future and provides for it.

Whoever does anything with his whole heart makes it for the time his "one idea." Every discoverer, every inventor, every poet, every artist, every orator, every general, every statesman, is absorbed in his work; and

he succeeds just in proportion as for the time it becomes his "one idea." The occasion must not be unworthy or petty; but the more complete the self-dedication, the more effective is the result. I know no better instance of "one idea" pursued to a triumphant end than when our candidate, after planning his campaign, announced that he meant "to fight it out on this line, if it took all summer." Here was no occasion for reproach, except from Rebels, who would have been glad to see him fail in that singleness of idea which gave him the victory. There are other places where the same singleness is needed and the idea is not less lofty. The Senate Chamber has its battles also; and the conflict embraces the whole country. Personally, I have nothing to regret, except my own inadequacy. I would have done more, if I could. Call it "one idea." That idea is nothing less than country, with all that is contained in that inspiring word, and with the infinite vista of the same blessings for all mankind.

From these allusions, suggested by my own personal relations, I come directly to the issues of this canvass. Others have presented them so fully that there is less need of any minute exposition on my part, even if the heralds of triumph did not announce the certain result. But you will bear with me while I state briefly what is to be decided. This may be seen in general or in detail.

Speaking generally, you are to decide on the means for the final suppression of the Rebellion, and the establishment of security for the future. Shall the Rebellion which you have subdued on the bloody field be permitted to assert its power again, or shall it be trampled

out, so that its infamous pretensions shall disappear forever? These general questions involve the whole issue. If you sympathize with the Rebellion, or decline to take security against its recurrence, then vote for Seymour and Blair. I need not add, that, if you are in earnest against the Rebellion, and seek just safeguards for the Republic, then vote for Grant and Colfax. The case is too plain for argument.

It may be put more precisely still: *Shall the men who saved the Republic continue to rule it, or shall it be handed over to Rebels and their allies?* Such is the simple issue, stripped of all hypocritical guise; for here, as in other days, the real question is concealed by the enemy. The plausible terms of Law and Constitution, with even the pretence of generosity, now employed to rehabilitate the Rebellion, are unmasked by the witty touch of "Hudibras," whose words are as pointed now as under Charles the Second: —

> "What 's liberty of conscience,
> I' th' natural and genuine sense?
> 'T is to restore, with more security,
> Rebellion to its ancient purity." [1]

On the one side are loyal multitudes, and the generous freedmen who bared themselves to danger as our allies, with Grant still at their head; and on the other are Rebels, under the name of the Democratic Party, all dripping with blood from innumerable fields of slaughter where loyal men gasped away life, — from Fort Pillow, from Andersonville, from pirate decks, — hurrying, with Seymour at their head, to govern the Republic in the name of the Lost Cause. Not so fast, ye men of blood! Stand back! They who encountered you before will encounter you again.

[1] Hudibras, Part III. Canto I. 1303 - 6.

I would not make this statement too strong. I wish to keep within bounds. But the facts are too patent to admit of doubt. Yes, it is the old Democracy, which, after giving to the Rebellion its denationalizing pretension of State Rights, and all its wicked leaders, from Davis to Forrest and Semmes,— after thwarting every measure for its suppression as "unconstitutional," from the Proclamation of Emancipation to the firing of a gun or the condemnation of Vallandigham, — after interfering with enlistments also as "unconstitutional," — after provoking sympathetic riots, — after holding up "blue lights" for the guidance of the enemy, — after hanging upon the country like a paralysis, — and after, finally, under the lead of Seymour, declaring the war a "failure,"—this same Democracy, still under the lead of Seymour, champions the Lost Cause. Under the pretence of restoring Rebels to rights, it seeks to restore them to power; and this is the very question on which you are to vote. The Tories at the end of the Revolution were more moderate. They did not insist upon instant restoration to rights forfeited by treason; nor did they bring forward a candidate against Washington. This is reserved for the Tories of our day.

All this is general. Descending to details, we find that the issue now presented reappears in other questions. Of these none is more important than that of the Reconstruction Acts, which have been openly assailed as "unconstitutional, revolutionary, and void."[1] In nothing more than in this declaration, associated with the letter of its candidate, do we behold the audacity of the

[1] Resolutions of the National Democratic Convention, July, 1868: McPherson's Political History of the United States during Reconstruction, p. 368.

Rebel Party. Even while professing allegiance and asking your vote, they proclaim war in a new form. Instead of *Secession* maintained by arms, it is now *Nullification* maintained by arms. In no other way can we interpret the party platform, and the programme of Mr. Blair, when, with customary frankness, he calls upon the President "to declare these Acts null and void, compel the army to undo its usurpations at the South, and disperse the carpet-bag State governments."[1] Here is Nullification with a vengeance, — that very Nullification which, in a much milder type, made Andrew Jackson threaten to hang its authors high as Haman. Secession is declared to be settled by the war; but Nullification is openly recognized. What is the difference between the two? The answer is plain. Secession is war out of the Union; Nullification is war in the Union. And this is the open menace of the Rebel Party.

The Reconstruction Acts err from what they fail to do rather than from what they do. They do too little rather than too much. They should have secured a piece of land to the landless freedman, whose unrewarded toil has mingled for generations in the soil; and they should have secured a system of common schools open to all. In these demands, as in every other measure of Reconstruction, I would do nothing in severity or triumph, nothing to punish or humble. Nor is it only in justice to the freedman, who has a bill against his former master for unpaid wages, and also against the country for an infinite debt, but it is for the good of all constituting the community, including

[1] Letter of F. P. Blair to Col. James O. Brodhead, June 30, 1868: McPherson's Political History of the United States during Reconstruction, p. 381.

the former master. Nothing can be truer than that under such influences society will be improved, character will be elevated, and the general resources will be enlarged. Only in this way will the Barbarism of Slavery be banished, and a true civilization organized in its place. Our simple object is expressed in the words of Holy Writ: "Let us build these cities, and make about them walls and towers, gates and bars, while the land is yet before us."[1] By contributing to this work, by laboring for its accomplishment, by sending it our God-speed, we perform a service at once of the highest charity and the highest patriotism, which hereafter the children of the South, emancipated from error, will rejoice to recognize. With Human Rights under a permanent safeguard, there can be no limit to prosperity. As under this sunshine the land yields its increase and the gardens bloom with beauty, while commerce and manufactures enjoy a new life, they will confess that we did well for them, and will hail with pride the increased glory of the Republic. If, as in ancient Rome, we demanded the heads of senators and orators, — if, as in England, we took the life and estate of all traitors, — if, as in Germany, we fatigued the sword with slaughter, and cried "havoc," — if, as in France, we set up guillotines, and worked them until the blood stood in puddles beneath, — if, as in all these historic countries, we acted in pitiless vengeance, — if in anything we have done or attempted there was one deed of vengeance, — then we, too, might deserve a chastening censure. But all that we have done, next after the safety of the Republic, is for the good of those who were our enemies, and who despitefully used us. Never

[1] 2 Chronicles, xiv. 7.

before was clemency so sublime; never before was a rebel people surrounded by beneficence so comprehensive. Great as was the Republic in arms, it is greater still in the majesty of its charity.

So far as the Reconstruction Acts have been assailed, I am ready to defend them against all comers. And I repel at the outset every charge or suggestion of harshness. They are not harsh, unless it is harsh to give every man his due. If they are harsh, then is beneficence harsh, then is charity harsh. It is only by outraging every principle of justice, stifling every sympathy with Human Rights, and discarding common sense, and, still further, by forgetting all the sacred obligations of country, that we can submit to see political power in the hands of Rebels. No judgment is too terrible for us, if we consent to the sacrifice. For the sake of the freedman, for the sake of his former master, for the sake of all, and for the sake of the Republic, this must not be. Therefore were the Reconstruction Acts adopted by immense majorities in both Houses of Congress as the guaranty of peace. The aspiration of our candidate was in every line and word, "Let us have peace."

Two questions are presented by the enemies of these Acts: first, on the Power of Congress; and, secondly, on the Equal Rights of the Freedman.

Too often have I asserted the plenary power of Congress with arguments that have never been answered, to feel it necessary now to occupy time on this head. The case may be proved in so many ways that it is difficult to know which to select. Whether the power is derived from the necessity of the case, because the Rebel States

were without governments, which is the reason assigned by Chief Justice Marshall for the jurisdiction of Congress over the Territories, — or from the universal rights of war, following the subjection of belligerents on land, — or from the obligation of the United States to guaranty a republican government to each State, — or from the Constitutional Amendment abolishing Slavery, with its supplementary clause conferring upon Congress power to enforce this abolition, — whether the power is derived from one or all of these bountiful sources, it is clear that it exists. As well say that the power over the Territories, the war power, the guaranty power, and the power to enforce the abolition of Slavery, do not exist; as well say that the Constitution itself does not exist.

If any confirmation of this irresistible conclusion were needed, it might be found in the practical admissions of Andrew Johnson, who, while perversely usurping the power of Reconstruction, did it in the name of the Nation. In the prosecution of this usurpation, he summoned conventions of delegates made eligible by his proclamation, and chosen by electors invested by him with the right of suffrage; and through these conventions, to which he gave the law by telegraphic wire, he assumed to institute local governments. Thus has Andrew Johnson testified to the power of the Nation over Reconstruction, while, with an absurdity of pretension which history will condemn even more than any contemporary judgment, he assumed that he was the Nation. His usurpation has been overthrown, but his testimony to the power of the Nation remains. When the Nation speaks, it is by Congress, — as the Roman Republic spoke by its Senate and people, *Sena-*

tus Populusque Romanus, in whose name went forth those great decrees which ruled the world.

In considering the constitutionality of the Reconstruction Acts, there is a distinction, recognized by repeated judgments of the Supreme Court, which has not been sufficiently regarded, even by our friends. The Rebel Party, especially in their platform at New York, forget it entirely. They tell us that the Reconstruction Acts are "unconstitutional, revolutionary, and void," and Wade Hampton boasts that he prompted this declaration. I have already exhibited the power of Congress in four different sources; but beyond these is the principle, *that Congress, in the exercise of political powers, cannot be questioned.* So says the Supreme Court. Thus it has been decided, in general terms, "that the action of *the political branches* of the Government in a matter that belongs to them is conclusive."[1] And in the famous case of *Luther* v. *Borden*, it is announced, that, where the National Government interferes with the domestic concerns of a State, "the Constitution of the United States, as far as it has provided for an emergency of this kind, *has treated the subject as political in its nature, and placed the power in the hands of that department*"; and it is further added, that "its decision is binding on every other department of Government, and could not be questioned in a judicial tribunal."[2] In the face of these peremptory words, it is difficult to see what headway can be made in contesting the validity of the Reconstruction Acts, except by arms. If ever a question was political, it is this. It is political in every aspect, whether regarded as springing from the necessity of the case, from the rights of war, from the obligation to guaranty

[1] Williams *v.* Suffolk Insurance Co.: 13 Peters, R., 420.
[2] 7 Howard, R., 42.

a republican government, or from the power to enforce the abolition of Slavery. Never before was any question presented so completely political. Reconstruction is as political as the war, or as any of the means for its conduct. It is political from beginning to end. It is nothing, if not political. Therefore, by unassailable precedents under the Constitution, are these Acts fixed and secured so that no court can touch them, — nothing but the war which Mr. Blair has menaced.

The Equal Rights conferred upon the freedman are all placed under this safeguard. Congress has done this great act of justice, and, thank God, it cannot be undone. It has already taken its place in the immortal covenants of history, and become a part of the harmonies of the universe. As well attempt to undo the Declaration of Independence, or suspend the law of gravitation. This cannot be. The bloody horrors of San Domingo, where France undertook to cancel Emancipation, testify with a voice of wail that a race once lifted from Slavery cannot be again degraded. Human Rights, when at last obtained, cannot be wrested back without a conflict in which God will rage against the oppressor.

But I do not content myself with showing the essential stability of this measure of Reconstruction. I defend it in all respects, — not only as an act of essential justice, without which our Nation would be a deformity, but as an irresistible necessity, for the sake of that security without which peace is impossible. It is enough that justice commanded it; but the public exigency left no opportunity for any fine-spun system, with educational or pecuniary conditions, even if this were consistent with the fundamental principle that "all just

government stands only on the consent of the governed." As the strong arms of this despised race had been needed for the safety of the Republic, so were their votes needed now. The cause was the same. Without them loyal governments would fail. They could not be organized. To enfranchise those only who could read and write or pay a certain tax was not enough. They were too few. All the loyal are needed at the ballot-box to counterbalance the disloyal.

It was at this time, and under this pressure, that conditions, educational or pecuniary, were seen to be inadmissible; and many, considering the question in the light of principle, were led to ask, if, under any circumstances, such conditions are just. Surely an unlettered Unionist is better than a Rebel, however learned or wise, and on all practical questions will vote more nearly right. If there is to be exclusion, let it be of the disloyal, and not of the loyal. Nobody can place the value of education too high; but is it just to make it the prerequisite to any right of citizenship? There are many, whose only school has been the rough world, in whom character is developed to a rare degree. There are freedmen unable to read or write who are excellent in all respects. If willing to reject such persons as allies, can you justly exclude them from participation in the Government? Can you justly exclude any good citizen from such participation?

It is recorded of the English statesman, Charles James Fox, that, after voting at a contested election, and finding his coachman, who had driven him to the polls, voting the other way, he protested pleasantly that the coachman should have told him in advance how he was

to vote, that the two might have paired off and stayed at home. Here is Fox at the polls neutralized by his coachman. A similar incident is told of Judge Story, here in Cambridge. Both stories have been used to discredit suffrage by the people. They have not this effect on my mind. On the contrary, I find in them a beautiful illustration of that Equality before the Law which is the promise of republican institutions. At the ballot-box the humblest citizen is the equal of the great statesman or the great judge. If this seems unreasonable, it must not be forgotten that the eminent citizen exercises an influence which is not confined to his vote. It extends with his fame or position, so that, though he has only a single vote, there are many, perhaps multitudes, swayed by his example. This is the sufficient compensation for talent and education exerted for the public weal, without denying to anybody his vote. The common man may counterbalance the vote of the great statesman or great judge, but he cannot counterbalance this influence. The common man has nothing but his vote. Who would rob him of this?

Thus far I have shown the Reconstruction Acts to be constitutional, natural, and valid, in contradiction to the Rebel platform, asserting them to be "unconstitutional, revolutionary, and void." But these Acts may be seen in other aspects. I have shown what they accomplish. See now what they prevent; and here is another series of questions, every one of which is an issue on which you are to vote.

Are you ready for the revival of Slavery? I put this question plainly; for this is involved in the irreversi-

bility of the Reconstruction Acts. Let these be overthrown or abandoned, and I know no adequate safeguard against an outrageous oppression of the freedman, which will be Slavery under another name. The original type, as received from Africa and perpetuated here, might not appear; but this is not the only form of the hateful wrong. Not to speak of peonage, as it existed in Mexico, there is a denial of rights, with exclusion from all participation in the Government and subjection to oppressive restraints, which of itself is a most direful slavery, under which the wretched bondman smarts as beneath the lash. And such a slavery has been deliberately planned by the Rebels. It would be organized, if they again had power. Of this there can be no doubt. The evidence is explicit and authentic.

I have here a Congressional document, containing the cruel legislation of the Rebel States immediately after the close of the Rebellion, under the inspiration of the Johnson governments.[1] Here are its diabolical statutes, fashioned in the spirit of Slavery, with all that heartlessness which gave to Slavery its distinctive character. The emancipated African, shut out from all participation in the Government, despoiled of the ballot, was enmeshed in a web of laws which left him no better than a fly in the toils of a spider. If he moved away from his place of work, he was caught as a "vagrant"; if he sought work as a mechanic or by the job, he was constrained by the requirement of a "license"; if he complained of a white man, he was subjected to the most cunning impediments; if he bought arms for self-defence, he was a violator of law;— and thus, wherever he went,

[1] Laws in relation to Freedmen: Executive Documents, 39th Cong. 2d Sess., Senate, No. 6, pp. 170, seqq.

or whatever he attempted, he was a perpetual victim. In Mississippi he could not "rent or lease any lands or tenements except in incorporated towns or cities," thus keeping him a serf attached to the soil of his master. Looking at these provisions critically, it appears, that, while pretending to regulate vagrants, apprentices, licenses, and civil rights, the freedman was degraded to the most abject condition; and then, under a pretence for the public peace, he was shut out from opportunities of knowledge, and also from keeping arms, while he was subjected to odious and exceptional punishments, as the pillory, the stocks, the whipping-post, and sale for fine and costs. Behind all these was violence, assassination, murder, with the Ku-Klux-Klan constituting the lawless police of this new system. The whole picture is too horrible; but it is true as horrible. In the face of this unanswerable evidence, who will say that it was not proposed to revive Slavery? To call such a condition Liberty is preposterous. If not a slave of the old type, the freedman was a slave of a new type, invented by his unrepentant master as the substitute for what he had surrendered to the power of the Nation. Beginning with a caste as offensive and irreligious as that of Hindostan, and adding to it the pretensions of an oligarchy in government, the representatives of the old system were preparing to trample upon an oppressed race. The soul sickens at the thought.

With all this indubitable record staring us in the eyes, with the daily report of inconceivable outrage darkening the air, with wrong in every form let loose upon the long-suffering freedman, General Lee breaks the respectable silence of his parole to deny that "the

Southern people are hostile to the negroes, and would oppress them, if in their power to do it." The report, he asserts, is "entirely unfounded," — that is the phrase, — "entirely unfounded"; and then he dwells on the old patriarchal relation, with the habit from childhood of "looking upon them with kindness" (witness the history of Slavery in its authentic instances!); and then he insists that "the change in the relations of the two races has wrought no change in feelings towards them," that "without their labor the land of the South would be comparatively unproductive, and therefore *self-interest would prompt the whites of the South to extend to the negroes care and protection.*" Here is the threadbare pretension with which we were so familiar through all the dreary days of the old Barbarism, now brought forward by the Generalissimo of the Rebellion to vindicate the new, — and all this with an unabashed effrontery, which shows, that, in surrendering his sword, he did not surrender that insensibility to justice and humanity which is the distinctive character of the slave-master. The freedman does not need the "care and protection" of any such person. He needs the rights of an American citizen; and you are to declare by your votes if he shall have them.

The opposition to the Reconstruction Acts manifests itself in an inconceivable brutality, kindred to that of Slavery, and fit prelude to the revival of this odious wrong. Shall this continue? Outrage in every form is directed against loyal persons, without distinction of color. It is enough that a man is a patriot for Rebels to make war upon him. Insulted, abused, and despoiled of everything, he is murdered on the highway, on the

railway, or, it may be, in his own house. Nowhere is he safe. The terrible atrocity of these acts is aggravated by the rallying cries of the murderers. If the victim is black, then it is a "war of races"; if white, then he is nothing but a "carpet-bagger"; and so, whether black or white, he is a victim. History has few scenes of equal guilt. Persecution in all its untold cruelties, ending in martyrdom, rages over a wide-spread land.

If there be a "war of races," as is the apologetic defence of the murderers, then it is war declared and carried on by whites. The other race is inoffensive and makes no war, asking only its rights. The whole pretension of a "war of races" is an invention to cover the brutality of the oppressors. Not less wicked is the loud-mouthed attack on immigrants, whom Rebels choose to call "carpet-baggers," — that is, American citizens, who, in the exercise of the rights of citizenship, carry to the South the blood, the capital, and the ideas of the North. This term of reproach does not belong to the Northerner alone. The carpet-bag is the symbol of our whole population: there is nobody who is not a "carpet-bagger," or at least the descendant of one. Constantly the country opens its arms to welcome "carpet-baggers" from foreign lands. And yet the cry ascends that "carpet-baggers" are to be driven from the South. Here permit me to say, that, if anybody is driven from anywhere, it will not be the loyal citizen, whether old or new.

On all this you are to vote. It will be for you to determine if there shall be peace between the two races, and if American citizens shall enjoy everywhere within the jurisdiction of the Republic all the rights of citizenship, free from harm or menace, and with the liberty of uttering their freest thoughts.

There is another issue at this election. It is with regard to the unpatriotic, denationalizing pretensions of State Rights. In their name was the Rebellion begun, and now in their name is every measure of Reconstruction opposed. Important as are the functions of a State in the administration of local government, especially in resisting an overbearing centralization, they must not be exalted above the Nation in its own appropriate sphere. Great as is the magic of a State, there is to my mind a greater magic in the Nation. The true patriot would not consent to see the sacrifice of the Nation more than the true mother before King Solomon would consent to see the sacrifice of her child. It is as a Nation — all together making one — that we have a place at the council-board of the world, to excite the pride of the patriot and the respect of foreign powers. It is as a Nation that we can do all that becomes a civilized government; and "who dares do more is none." But all this will be changed, just in proportion as any State claims for itself a sovereignty which belongs to all, and reduces the Nation within its borders to be little more than a tenant-at-will, — just in proportion as the National Unity is assailed or called in question, — just in proportion as the Nation ceases to be a complete and harmonious body, in which each State performs its ancillary part, as hand or foot to the natural body. There is an irresistible protest against such a sacrifice, which comes from the very heart of our history. It was in the name of "the good people of these Colonies," called "one people," that our fathers put forth the Declaration of Independence, with its preamble of Unity, and its dedication of the new Nation to Human Rights. And now it is for us, their children, to keep this Unity, and to

perform all the national promises thus announced. The Nation is solemnly pledged to guard its Unity, and to make Human Rights coextensive with its boundaries. Nor can it allow any pretension of State Rights to interfere with this commanding duty.

There is still another issue, which is subordinate to Reconstruction and dependent upon it, so, indeed, as to be a part of it. I refer to the Financial Question, with the menace of Repudiation in different forms. Let the Reconstruction Acts be maintained in peace, in other words, let peace be established in the Rebel States, and the menace of Repudiation will disappear from the scene, — none so poor to do it reverence. If it find any acceptance now, it is only in that revolutionary spirit which assails all the guaranties of peace. Repudiation of the Reconstruction Acts, with all their securities for Equal Rights, is naturally followed by repudiation of the National Debt. The Acts and the Debt are parts of one system, being the means and price of peace. So strongly am I convinced of the potency of this influence, that I do not doubt the entire practicability of specie payments on the fourth of July next after the inauguration of General Grant.

Nay, more, it is my conviction, not only that we *can* have specie payments at that time, but that we *ought* to have them. If we can, we ought; for this is nothing but the honest payment of what we owe. A failure to pay may be excused, but never justified. Our failure was originally sanctioned only under the urgency of war; but this sanction cannot extend beyond the urgency. It is sometimes said that necessity renders an action just, and Latin authority is quoted: *Id enim*

justissimum quod necessarium. But it is none the less untrue. Necessity may excuse an action not in itself just, but it is without the force to render it just; for justice is immutable. The taking of the property of another under the instigation of famine is excused, and so is the taking of the property of citizens by the Government during war, — in both cases from necessity. But as the necessity ceases, the obligations of justice revive. Necessity has no rights, but only privileges, which disappear with the exigency. Therefore do I say that the time has passed when the Nation can be excused for refusing to pay according to its promise. But it is vain to expect this important change from a political party which emblazons Repudiation on its banners.

It is in two conspicuous forms that Repudiation flaunts: first, in the barefaced proposition to tax the bonds, contrary to the contract at the time the money was lent; and the other, not less barefaced, to pay interest-bearing bonds with greenbacks, or, in other words, mere promises to pay without interest.

The exemption from taxation was a part of the original obligation, having, of course, a positive value, which entered into the price of the bond at the time of subscription. This additional price was taken from the pocket of the subscriber and transferred to the National Treasury, where it has been used for the public advantage. It is so much property to the credit of the bondholder, which it is gravely proposed to confiscate. Rebel property you will not confiscate; but you are considering how to confiscate that of the loyal citizen. Taxation of the bonds is confiscation.

The whole case can be stated with perfect simplicity. To tax the bonds is to break the contract *because you have the power*. It is an imitation of the Roman governor, a lieutenant of Cæsar, who, after an agreement by the people of Gaul to pay a certain subsidy monthly, arbitrarily changed the number of months to fourteen. The subtraction from the interest by taxation is kindred in dishonesty to the increase of the Gaulish subsidy by adding to the months. Of course, in private contracts between merchant and merchant no such thing could be done. But there can be no rule of good faith binding on private individuals which is not binding on the Nation, while there are exceptional reasons for extraordinary scrupulousness on the part of the Nation. As the transaction is vast, and especially as the Nation is conspicuous, what is done becomes an example to the world which history cannot forget. A Nation cannot afford to do a mean thing. There is another reason, founded on the helpless condition of the creditor, who has no power to enforce his claim, whether of principal or interest. It was Charles James Fox who once exclaimed against a proposition kindred to that now made: "Oh, no, no! His claims are doubly binding who trusts to the rectitude of another." This is only according to an admitted principle in the Laws of War, constraining the stronger power to the best of faith in dealing with a weaker power, because the latter is without the capacity to redress a wrong. This benign principle, borrowed from the Laws of War, cannot be out of place in the Laws of Peace; and I invoke it now as a sufficient protection against taxation of the bonds, even if common sense in its plainest lessons, and the rule of right in its most imperious precepts, did not forbid this thing.

The cheat of paying interest-bearing bonds in promises without interest is kindred in character to that of taxing the bonds. It is flat Repudiation. No subtlety of technicality, no ingenuity of citation, no skill in arranging texts of statutes, can make it anything else. It is so on the face, and it is so the more the transaction is examined. Here again I invoke that rule of conduct to a weaker party, and I insist, that, if, from any failure of explicitness excluding all contrary conclusion, there can be any reason for Repudiation, every such suggestion must be dismissed as the frightful well-spring of disastrous consequences impossible to estimate, while it is inconsistent with that Public Faith which is the supreme law.

Elsewhere I have considered this question so fully,[1] that I content myself now with conclusions only. Do you covet the mines of Mexico and Peru, the profits of extended commerce, or the harvest of your own teeming fields? All these and more you will multiply infinitely, if you will keep the Public Faith inviolate. Do you seek stability in the currency, with the assurance of solid business, so that extravagance and gambling speculations shall cease? This, too, you will have through the Public Faith. Just in proportion as this is discredited, the Nation is degraded and impoverished. If nobody had breathed Repudiation, we should all be richer, and the national debt would be at a lower interest, saving to the Nation millions of dollars annually. Talk of taxation; here is an annual tax of millions imposed by these praters of Repudiation.

Careless of all the teachings of history, you are exhorted to pay the national debt in greenbacks, know-

[1] Speech on Financial Reconstruction, *ante*, pp. 445, seqq.

ing that this can be done only by creating successive batches, counted by hundreds of millions, which will bring our currency to the condition of Continental money, when a night's lodging cost a thousand dollars, or the condition of the French *assignats*, the paper currency of the Revolution, which was increased to a fearful amount, precisely as it is now proposed to increase ours, until the story of Continental money was repeated. Talk of clipping the coin, or enfeebling it with alloy, as in mediæval times; talk of the disgraceful frauds of French monarchs, who, one after another in long succession, debased their money and swore the officers of the Mint to conceal the debasement; talk of persistent reductions in England, from Edward the First to Elizabeth, until coin was only the half of itself; talk of unhappy Africa, where Mungo Park found that a gallon of rum, which was the unit of value, was half water; — talk of all these; you have them on a colossal scale in the cheat of paying bonds with greenbacks. If not taught by our own memorable experience, when Continental money, which was the currency of the time, was lost, like the river Rhine at its mouth, in an enormous outstretched quicksand, then be taught by the experience of another country. Authentic history discloses the condition to which France was reduced. Carlyle, in his picturesque work on the Revolution, says: "There is, so to speak, no trade whatever, for the time being. *Assignats*, long sinking, emitted in such quantities, sink now with an alacrity beyond parallel." The hackney-coachman on the street, when asked his fare, replied, "Six thousand livres."[1] And still the *assignats* sunk, until at last the nation was a pauper. The Direc-

[1] Carlyle's French Revolution, (New York, 1867,) Book IX. Ch. 4.

tory, invested for the time with supreme power, on repairing to the palace of the Luxembourg, found it without a single article of furniture. Borrowing from the door-keeper a rickety table, an inkstand, and a sheet of letter-paper, they draughted their first official message, announcing the new government. There was not a solitary piece of coin in the Treasury; but there was a printing-press at command. *Assignats* were fabricated in the night, and sent forth in the morning wet from the press.[1] At last they ended in nothing, — but not until a great and generous people was enveloped in bankruptcy and every family was a sufferer. Bankruptcy has its tragedies hardly inferior to those which throb beneath the "sceptred pall."

Similar misconduct among us must result in similar consequences, with all the tragedies of bankruptcy. Not a bank, not a corporation, not an institution of charity, which would not suffer, — each sweeping multitudes into the abyss which it could not avoid. Business would be disorganized, values would be uncertain; nobody would know that the paper in his pocket to-day would buy a dinner to-morrow. There is no limit to the depreciation of inconvertible paper. Down, down it descends, as the plummet, to the bottom, or up, up, as the bubble in the air, until, whether down or up, it disappears. It is hard to think of the poor, or of those who depend on daily wages, under the trials of this condition. The rich may, for the time, live from their abundance; but the less favored class can have no such refuge. Therefore, for the poor, and for all who labor, do I now plead, when I ask that you shall not hearken to this painful proposition.

[1] Thiers, Histoire de la Révolution Française, (Paris, 1837,) Tom. VIII. p. 15: Directoire, Chap. I.

I plead, also, for the business of the country. So long as the currency continues in its present uncertainty, it cannot answer the demands of business. It is a diseased limb, no better than what is known in India as a "Cochin leg," or an excrescence not unlike the pendulous goitre which is the pitiful sight of an Alpine village. But it must be uncertain, unless we have peace. Therefore, for the sake of the currency, do I unite with our candidate in his longing. Business must be emancipated. How often are we told by the lawyers, in a saying handed down from antiquity, that "a wretched servitude exists where the law is uncertain"! But this is not true of the law only. Nothing short of that servitude which denies God-given rights can be more wretched than the servitude of an uncertain currency. And now that, by the blessing of God, we are banishing that terrible wrong which was so long the curse and shame of our Nation, let us apply ourselves to this other servitude, whose yoke we are all condemned to bear in daily life.

Looking into the travels of Marco Polo in the thirteenth century, you will find that he encountered in China paper money on a large scale, being an inconvertible currency standing on the credit of the Grand Khan, not unlike our greenbacks. Describing the celestial city of Kin-sai, the famous traveller says, "The inhabitants are idolaters, and they use paper money"; and then describing another celestial city, Ta-pin-zu, he says, "The inhabitants worship idols, and use paper money."[1] I know not if Marco Polo intended by this association to suggest any dependence of paper money

[1] Travels of Marco Polo, ed. Marsden, (London, 1818,) pp. 353, 354, 521, 547.

upon the worship of idols. It is enough that he puts them together. To my mind they are equally forbidden by the Ten Commandments. If one Commandment enjoins upon us not to worship any graven image, does not another say expressly, "Thou shalt not steal"?

There is another consideration, which I have reserved for the last, and which I would call an issue in the pending election. It is nothing less than the good name of the Republic, and its character as an example to the Nations. All this is directly in question. If you are true to the great principles of Equal Rights, declared by our fathers as the foundation of just government, — if you stand by the freedman and maintain him in well-earned citizenship, — if you require full payment of the national debt in coin, principal and interest, at the pleasure of the holder, so that the Republic shall have the crown of perfect honesty, as also of perfect freedom, — I do not doubt that it will exercise a far-reaching sway. Nothing captivates more than the example of virtue, — not even the example of vice. *By this sign conquer:* by fidelity to declared principles, by the performance of all promises, by a good name. Then will American history supply the long-sought definition of a Republic, and our Western star will illumine the Nations.

Reverse the picture, let the Rebel Party prevail, and what do we behold? The bonds of the Nation repudiated, and the Equal Rights of the freedman, which are nothing but bonds of the Nation, repudiated also. Alas! the example of the Republic is lost, and our Western star is quenched in darkness. But this cannot be without a shock, as when our first parents tasted the forbidden fruit: —

> "Earth felt the wound; and Nature from her seat,
> Sighing through all her works, gave signs of woe
> That all was lost."

The shock will begin at home; but it will spread wherever there are hearts to thrill with anguish. The struggling people in foreign lands, now turned to us with hope, will sink in despair as they observe the disastrous eclipse.

I would not seem too confident in the destinies of my country; but I cannot doubt, that, if only true to herself, there is nothing too vast for her peaceful ambition. Here again I catch the aspiration of our leader in war, "Let us have peace." Out of peace will spring all else. Abroad there will be welcome and acceptance, with the might of our example constantly increasing. At home there will be safety and opportunity for all within our borders, with freedom of speech, freedom of the press, freedom of travel, and the equal rights of citizenship, like the rights of the national creditor, all under the perpetual safeguard of that Public Faith which is the golden cord of the Republic. Let despots break promises, but not our Republic. A Republic is where every man has his due. Equality of rights is the standing promise of Nature to man, and the Republic has succeeded to this promise.

In harmony with the promise of Nature is the promise of our fathers, recorded in the Declaration of Independence, to which the Republic has succeeded also. It is the twofold promise, first, that all are equal in rights, and, secondly, that just government stands only on the consent of the governed, — being the two great political commandments on which hang all laws and constitutions. Keep these truly, and you will keep all. Write them in your statutes; write them in

your hearts. *This is the great and only final settlement of all existing questions.* Under its kindly influence the past Rebellion will disappear, alike in its principles and its passions; future Rebellion will be impossible; and there will be a peace never to be disturbed. To this sublime consecration of the Republic let me aspire. With nothing less can I be content.

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